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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BIOCARDIA LIFESCIENCES, INC.

Plaintiff,

v.

SURBHI SARNA, nVISION MEDICAL
CORPORATION, BOSTON SCIENTIFIC
CORPORATION, BOSTON SCIENTIFIC
SCIMED, INC., FORTIS ADVISORS LCC,
ARBORETUM VENTURES IV, LP, ASTIA
ANGEL nVISION LLC, CATALYST HEALTH
VENTURES (PF), L.P., CATALYST HEALTH
VENTURES FOLLOW-ON FUND, L.P.,
CATALYST HEALTH VENTURES III, L.P.,
CATALYST HEALTH VENTURES, LP, CHV
INVESTMENTS, LLC, CHV PARTNERS
FUND III, L.P., CHV-E PARTNERS III, L.P.,
DRAPER ASSOCIATES INVESTMENTS, LLC,
DRAPER ASSOCIATES RISKMASTER FUND
II, LLC, DRAPER ASSOCIATES
RISKMASTERS FUND III, LLC,
EXCELESTAR VENTURES I, LLC,
EXXCLAIM CAPITAL PARTNERS I, LP,
FOGARTY INSTITUTE FOR INNOVATION,
GOLDEN SEEDS nVISION MEDICAL, LLC,
LIFE SCIENCES ANGEL INVESTORS VIII,
L.L.C., LMNVC, LLC, AND SERAPH
nVISION, LLC,

Defendants.

CASE NO. 3:20-cv-07510

COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff BioCardia Lifesciences, Inc. (“BioCardia Lifesciences”) alleges claims against
 2 defendants Surbhi Sarna (“Ms. Sarna”), nVision Medical Corporation (“nVision”), Boston
 3 Scientific Corporation (“Boston Scientific”), Boston Scientific Scimed, Inc. (“Boston Scimed”),
 4 Fortis Advisors LLC (“Fortis”), Arboretum Ventures IV, LP , Astia Angel nVision LLC, Catalyst
 5 Health Ventures (PF), L.P., Catalyst Health Ventures Follow-On Fund, L.P., Catalyst Health
 6 Ventures III, L.P., Catalyst Health Ventures, LP, CHV Investments, LLC, CHV Partners Fund
 7 III, L.P., CHV-E Partners III, L.P., Draper Associates Investments, LLC, Draper Associates
 8 Riskmaster Fund II, LLC, Draper Associates Riskmaster Fund III, LLC, Excelestar Ventures I,
 9 LLC, EXXclaim Capital Partners I, LP, Fogarty Institute for Innovation, Golden Seeds nVision
 10 Medical, LLC, Life Sciences Angel Investors VIII, L.L.C., LMNVC, LLC and Seraph nVision,
 11 LLC (including nVision collectively “Defendants”; excluding nVision collectively the
 12 “Shareholder Defendants”) seeking correction of inventorship, damages, including damages for
 13 Defendant’s misappropriation of trade secrets and Ms. Surbhi Sarna’s breach of contract, and
 14 disgorgement of the Shareholder Defendants’ unjust enrichment.

15 **PARTIES**

16 1. BioCardia Lifesciences is a corporation organized and existing under the laws of
 17 Delaware with its principal place of business at 125 Shoreway Road, Suite B, San Carlos CA
 18 94070. BioCardia Lifesciences is a wholly owned subsidiary of BioCardia, Inc., a corporation
 19 organized under the laws of the State of Delaware with the same principal place of business as
 20 BioCardia Lifesceinces. Prior to an August 22, 2016 transaction in which a company, Tiger X
 21 Medical, Inc., acquired all of the stock in what is now BioCardia Lifesciences and changed its
 22 name to “BioCardia, Inc.” BioCardia Lifescienses itself was named “BioCardia, Inc.”

23 2. BioCardia Lifesciences is informed and believes and on that basis alleges that
 24 defendant Surbhi Sarna is an individual residing at 249 Randall Street, San Francisco, CA 94131,
 25 within this District.

26 3. BioCardia Lifesciences is informed and believes and on that basis alleges that
 27 defendant Boston Scientific is a corporation organized and existing under the laws of the state of
 28 Delaware with its principal place of business at 300 Boston Scientific Way, Marlborough, MA

1 01752-1 234 and that Boston Scientific acquired all of the stock in nVision through a reverse
 2 triangular merger with a wholly-owned subsidiary Boston Scientific created for that purpose,
 3 Boston Scientific Clarity Merger Corp, that was completed on April 13, 2018, whereupon Boston
 4 Scientific Clarity Merger Corp. changed its name to nVision .

5 4. BioCardia Lifesciences is informed and believes and on that basis alleges that
 6 defendant Boston Scientific Scimed, Inc. is (a) a corporation organized and existing under the law
 7 of the state of Minnesota with its principle place of business at One SciMed Place, Maple Grove,
 8 Minnesota 55311; (b) a wholly-owned subsidiary of Boston Scientific; and (c) is the current
 9 assignee of record for all patents that were previously held by nVision Medical Corporation for
 10 which it paid no consideration.

11 5. BioCardia Lifesciences is informed and believes and on that basis alleges that
 12 defendant Fortis Advisors LLC is a Delaware limited liability company with its principal place of
 13 business in San Diego, California, and is sued in its capacity as the Stockholders' Representative
 14 for the Former Stockholders of nVision Medical Corporation based on its repeated allegations in
 15 the complaint it filed against BioCardia, Inc. that it has "a recognized interest" "that is adverse to
 16 BioCardia's allegations." See Dkt. No. 1 in Case No. 3:19-05645-VC at ¶¶ 14, 76, 78, 90, 92,
 17 101, 103, 111, 113, 119, 121, 127, 128, 129, 137, 145, 152, 154. To the extent this Complaint
 18 alleges acts committed by Fortis, those allegations refer to acts of the Stockholders for whom
 19 Fortis is the Stockholder Representative. As further alleged herein, Fortis is required to disgorge
 20 to BioCardia the amount it holds in trust for the Shareholder Defendants as a result of the acts of
 21 the Stockholders for whom Fortis is the Stockholder Representative.

22 6. BioCardia Lifesciences is informed and believes and on that basis alleges that
 23 Defendant nVision is a Delaware corporation with its principal place of business at 1192 Cherry
 24 Avenue, San Bruno, CA 94066, within this District, and is a wholly-owned subsidiary of Boston
 25 Scientific, a corporation organized and existing under the laws of the state of Delaware with its
 26 principal place of business at 300 Boston Scientific Way, Marlborough, MA 01752-1 234 which
 27 acquired nVision, including all of its intellectual property, through a Merger on April 13, 2018.

28 7. BioCardia Lifesciences is informed and believes and on that basis alleges that

1 defendant Arboretum Ventures IV, LP is a Michigan Limited Partnership with a place of
 2 business at 303 Detroit St, Ste 301, Ann Arbor, MI 48104 whose agent for service is The
 3 Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801
 4 and is a former shareholder of nVision whose shares were acquired by Boston Scientific, 90% of
 5 the initial consideration for which was paid in cash and 10% held in escrow, and additional
 6 consideration for which shares is subject to an earn-out based on nVision's performance.
 7 Arboretum Ventures IV, LP formed in 2015 and has approximately \$203.2 million in assets.
 8 Their minimum amount of investment is \$250,000. In 2019, Arboretum Ventures raised \$252
 9 million for its fifth fund.

10 8. BioCardia Lifesciences is informed and believes and on that basis alleges that
 11 defendant Astia Angel nVision LLC ("Astia") is a Delaware Limited Liability Company with a
 12 place of business at One Market Plaza, Spear Tower 24th Floor San Francisco, CA 94105, whose
 13 agent for service is Harvard Business Services, Inc. 16192 Coastal Hwy Lewes, DE 19958, and is
 14 a former shareholder of nVision whose shares were acquired by Boston Scientific, 90% of the
 15 initial consideration for which was paid in cash and 10% held in escrow, and additional
 16 consideration for which shares is subject to an earn-out based on nVision's performance.
 17 BioCardia Lifesciences is informed and believes and on that basis alleges that Anula Jayasuriya
 18 served on the Board of Trustees of Astia. On or around December 4, 2010, while Ms. Sarna was
 19 still working at BioCardia, Ms. Jayasuriya reached out to Ms. Sarna via her BioCardia email
 20 address and introduced Ms. Sarna to Linda Greub. Ms. Sarna then followed up with Ms. Greub to
 21 request assistance in conceptualizing a catheter system that was the invention of a provisional
 22 patent application Ms. Sarna filed while still working at BioCardia. BioCardia Lifesciences is
 23 informed and believes and on that basis alleges that Ms. Jayasuriya knew that BioCardia was a
 24 medical device company specializing in catheters. BioCardia Lifesciences is informed and
 25 believes and on that basis alleges that Astia, through its affiliation with Ms. Jayasuriya, were
 26 conscious wrongdoers because they acted with the knowledge or despite the known risk that the
 27 intellectual property that formed the basis of nVision Medical Corporation had been
 28 misappropriated by Ms. Sarna. Founded in 1999, Astia Angel nVision LLC has made over fifty

1 (50) investments.

2 9. BioCardia Lifesciences is informed and believes and on that basis alleges that
3 defendant Catalyst Health Ventures (PF), L.P. is a Massachusetts Limited Partnership with a
4 place of business at 50 Braintree Hill Office Park Suite 301 Braintree, MA 02184, whose agent
5 for service is The Corporation Trust Company, Corporation Trust Center, 1209 Orange St.
6 Wilmington, DE 19801, and is a former shareholder of nVision whose shares were acquired by
7 Boston Scientific, 90% of the initial consideration for which was paid in cash and 10% held in
8 escrow, and additional consideration for which shares is subject to an earn-out based on nVision's
9 performance. Catalyst Health Ventures received \$60.5 million for their fourth fund and has over
10 \$100 million in capital.

11 10. BioCardia Lifesciences is informed and believes and on that basis alleges that
12 defendant Catalyst Health Ventures Follow-On Fund, L.P. is a Massachusetts Limited Partnership
13 with a place of business at 50 Braintree Hill Office Park Suite 301 Braintree, MA 02184, whose
14 agent for service is The Corporation Trust Company, Corporation Trust Center, 1209 Orange St.
15 Wilmington, DE 19801, and is a former shareholder of nVision whose shares were acquired by
16 Boston Scientific, 90% of the initial consideration for which was paid in cash and 10% held in
17 escrow, and additional consideration for which shares is subject to an earn-out based on nVision's
18 performance.

19 11. BioCardia Lifesciences is informed and believes and on that basis alleges that
20 defendant Catalyst Health Ventures III, L.P. is a Massachusetts Limited Partnership with a place
21 of business at 50 Braintree Hill Office Park Suite 301 Braintree, MA 02184, whose agent for
22 service is The Corporation Trust Company, Corporation Trust Center, 1209 Orange St.
23 Wilmington, DE 19801, and is a former shareholder of nVision whose shares were acquired by
24 Boston Scientific, 90% of the initial consideration for which was paid in cash and 10% held in
25 escrow, and additional consideration for which shares is subject to an earn-out based on nVision's
26 performance.

27 12. BioCardia Lifesciences is informed and believes and on that basis alleges that
28 defendant Catalyst Health Ventures, LP is a Massachusetts Limited Partnership with a place of

1 business at 50 Braintree Hill Office Park Suite 301 Braintree, MA 02184, whose agent for service
2 is The Corporation Trust Company, Corporation Trust Center, 1209 Orange St. Wilmington, DE
3 19801, and is a former shareholder of nVision whose shares were acquired by Boston Scientific,
4 90% of the initial consideration for which was paid in cash and 10% held in escrow, and
5 additional consideration for which shares is subject to an earn-out based on nVision's
6 performance.

7 13. BioCardia Lifesciences is informed and believes and on that basis alleges that
8 defendant CHV Investments, LLC is a Massachusetts Limited Liability Company with a place of
9 business at 50 Braintree Hill Office Park Suite 301 Braintree, MA 02184, whose agent for service
10 is The Corporation Trust Company, Corporation Trust Center, 1209 Orange St. Wilmington, DE
11 19801, and is a former shareholder of nVision whose shares were acquired by Boston Scientific,
12 90% of the initial consideration for which was paid in cash and 10% held in escrow, and
13 additional consideration for which shares is subject to an earn-out based on nVision's
14 performance.

15 14. BioCardia Lifesciences is informed and believes and on that basis alleges that
16 defendant CHV Partners Fund III, L.P. is a Massachusetts Limited Partnership with a place of
17 business at 50 Braintree Hill Office Park Suite 301 Braintree, MA 02184, whose agent for service
18 is The Corporation Trust Company, Corporation Trust Center, 1209 Orange St. Wilmington, DE
19 19801, and is a former shareholder of nVision whose shares were acquired by Boston Scientific,
20 90% of the initial consideration for which was paid in cash and 10% held in escrow, and
21 additional consideration for which shares is subject to an earn-out based on nVision's
22 performance.

23 15. BioCardia Lifesciences is informed and believes and on that basis alleges that
24 defendant CHV-E Partners III, L.P. is a Massachusetts Limited Partnership with a place of
25 business at 50 Braintree Hill Office Park Suite 301 Braintree, MA 02184, whose agent for service
26 is The Corporation Trust Company, Corporation Trust Center, 1209 Orange St. Wilmington, DE
27 19801, and is a former shareholder of nVision whose shares were acquired by Boston Scientific,
28 90% of the initial consideration for which was paid in cash and 10% held in escrow, and

1 additional consideration for which shares is subject to an earn-out based on nVision's
2 performance.

3 16. BioCardia Lifesciences is informed and believes and on that basis alleges that
4 defendant Draper Associates Investments, LLC is a California Limited Liability Company with a
5 place of business at 55 East Third Avenue, San Mateo, CA 94401, whose agent for service is
6 Timothy Cook Draper, 55 East Third Avenue, San Mateo, CA 94401, and is a former shareholder
7 of nVision whose shares were acquired by Boston Scientific, 90% of the initial consideration for
8 which was paid in cash and 10% held in escrow, and additional consideration for which shares is
9 subject to an earn-out based on nVision's performance. In 2016, Draper Associates raised a \$190
10 million fund to invest in technology companies. Draper Associates Investments, LLC is one of
11 many investment vehicles affiliated with Tim Draper, one of the most successful and
12 sophisticated venture capitalist investors in the world. Mr. Draper has over 35 years of
13 experience in investment banking and is known for making several highly successful investments
14 in technological companies like Baidu, Hotmail, Skype, Tesla, SpaceX, AngelList, Solarcity,
15 Ring, Twitter, DocuSign, Coinbase, Robinhood, Ancestry.com, Twitch, Cruise Automation, and
16 Focus Media, among others.

17 17. BioCardia Lifesciences is informed and believes and on that basis alleges that
18 defendant Draper Associates Riskmaster Fund II, LLC is a California Limited Liability Company
19 with a place of business at 55 East Third Avenue, San Mateo, CA 94401, whose agent for service
20 is Timothy Cook Draper, 55 East Third Avenue, San Mateo, CA 94401, and is a former
21 shareholder of nVision whose shares were acquired by Boston Scientific, 90% of the initial
22 consideration for which was paid in cash and 10% held in escrow, and additional consideration
23 for which shares is subject to an earn-out based on nVision's performance.

24 18. BioCardia Lifesciences is informed and believes and on that basis alleges that
25 defendant Draper Associates Riskmasters Fund III, LLC is a California Limited Liability
26 Company with a place of business at 55 East Third Avenue, San Mateo, CA 94401, whose agent
27 for service is Timothy Cook Draper, 55 East Third Avenue, San Mateo, CA 94401, and is a
28 former shareholder of nVision whose shares were acquired by Boston Scientific, 90% of the

1 initial consideration for which was paid in cash and 10% held in escrow, and additional
 2 consideration for which shares is subject to an earn-out based on nVision's performance.

3 19. BioCardia Lifesciences is informed and believes and on that basis alleges that
 4 defendant Excelestar Ventures I, LLC is a Massachusetts Limited Liability Company with a place
 5 of business at 1 Elm Square, Andover, MA 01810, whose agent for service is Northwest
 6 Registered Agent Service, Inc. 8 The Green, Suite B Dover, DE 19901, and is a former
 7 shareholder of nVision whose shares were acquired by Boston Scientific, 90% of the initial
 8 consideration for which was paid in cash and 10% held in escrow, and additional consideration
 9 for which shares is subject to an earn-out based on nVision's performance.

10 20. BioCardia Lifesciences is informed and believes and on that basis alleges that
 11 defendant EXXclaim Capital Partners I, LP ("EXXclaim") is a Delaware Limited Partnership
 12 with a place of business at 26010 Torello Ln., Los Altos, CA 94022, whose agent for service is
 13 Anula Jayasuriya 26010 Torello Ln., Los Altos, CA 94022, and is a former shareholder of
 14 nVision whose shares were acquired by Boston Scientific, 90% of the initial consideration for
 15 which was paid in cash and 10% held in escrow, and additional consideration for which shares is
 16 subject to an earn-out based on nVision's performance. BioCardia Lifesciences is informed and
 17 believes and on that basis alleges that Anula Jayasuriya founded, and serves as managing director
 18 of EXXclaim. On or around December 4, 2010, while Ms. Sarna was still working at BioCardia,
 19 Ms. Jayasuriya reached out to Ms. Sarna via her BioCardia email address and introduced Ms.
 20 Sarna to Linda Greub. Ms. Sarna then followed up with Ms. Greub to request assistance in
 21 conceptualizing a catheter system that was the invention of a provisional patent application Ms.
 22 Sarna filed while still working at BioCardia. BioCardia Lifesciences is informed and believes
 23 and on that basis alleges that Ms. Jayasuriya knew that BioCardia was a medical device company
 24 specializing in catheters. BioCardia Lifesciences is informed and believes and on that basis
 25 alleges that EXXclaim, through its affiliation with Ms. Jayasuriya, were conscious wrongdoers
 26 because they acted with the knowledge or despite the known risk that the intellectual property that
 27 formed the basis of nVision Medical Corporation had been misappropriated by Ms. Sarna.

28 21. BioCardia Lifesciences is informed and believes and on that basis alleges that

1 defendant Fogarty Institute for Innovation is a California Domestic non-profit company with a
 2 place of business at 2490 Hospital Dr., Suite 310, Mountain View, CA 94040, whose agent for
 3 service is Gaule Kuokka, 2490 Hospital Dr., Suite 310, Mountain View, CA 94040, and is a
 4 former shareholder of nVision whose shares were acquired by Boston Scientific, 90% of the
 5 initial consideration for which was paid in cash and 10% held in escrow, and additional
 6 consideration for which shares is subject to an earn-out based on nVision's performance.

7 22. BioCardia Lifesciences is informed and believes and on that basis alleges that
 8 defendant Golden Seeds nVision Medical, LLC is a Delaware Limited Liability Company with a
 9 place of business at 1192 Cherry Ave, San Bruno, CA 94066, whose agent for service is Harvard
 10 Business Services, Inc., 16192 Coastal Hwy., Lewes, DE 19958, and is a former shareholder of
 11 nVision whose shares were acquired by Boston Scientific, 90% of the initial consideration for
 12 which was paid in cash and 10% held in escrow, and additional consideration for which shares is
 13 subject to an earn-out based on nVision's performance.

14 23. BioCardia Lifesciences is informed and believes and on that basis alleges that
 15 defendant Life Sciences Angel Investors VIII, L.L.C. is a Delaware Limited Liability Company
 16 with a place of business at 1230 Bordeaux Dr., Sunnyvale, CA 94089, whose registered agent is
 17 The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE
 18 19801, and is a former shareholder of nVision whose shares were acquired by Boston Scientific,
 19 90% of the initial consideration for which was paid in cash and 10% held in escrow, and
 20 additional consideration for which shares is subject to an earn-out based on nVision's
 21 performance. Founded in 2005, Life Science Angels was ranked the top angel investment group
 22 in the U.S. by PR Newswire in 2014. Since 2005, Life Science Angels has invested
 23 approximately \$50 million in over forty (40) companies, and these companies have received an
 24 additional \$1 billion in follow up funding from venture capital firms and strategics.

25 24. BioCardia Lifesciences is informed and believes and on that basis alleges that
 26 defendant LMNVC, LLC ("LMNVC") is a Delaware Limited Liability Company with a place of
 27 business at 407 E. Laurel Circle, Palm Springs, CA 92262, whose agent for service is Philip
 28 Nevinny-Stickel, 407 E. Laurel Circle, Palm Springs, CA 92262, and is a former shareholder of

1 nVision whose shares were acquired by Boston Scientific, 90% of the initial consideration for
 2 which was paid in cash and 10% held in escrow, and additional consideration for which shares is
 3 subject to an earn-out based on nVision's performance. BioCardia Lifesciences is informed and
 4 believes and on that basis alleges that Linda Greub was a partner at LMNVC, LLC from October
 5 2010 to October 2018. On or around December 4, 2010, while Ms. Sarna was still working at
 6 BioCardia, Anula Jayasuriya reached out to Ms. Sarna via her BioCardia email address and
 7 introduced Ms. Sarna to Ms. Greub. Ms. Sarna then followed up with Ms. Greub to request
 8 assistance in conceptualizing a catheter system that was the invention of a provisional patent
 9 application Ms. Sarna filed while still working at BioCardia. BioCardia Lifesciences is informed
 10 and believes and on that basis alleges that Ms. Greub knew that BioCardia was a medical device
 11 company specializing in catheters. BioCardia Lifesciences is informed and believes and on that
 12 basis alleges that LMNVC through its affiliation with Ms. Greub, were conscious wrongdoers
 13 because they acted with the knowledge or despite the known risk that the intellectual property that
 14 formed the basis of nVision Medical Corporation had been misappropriated by Ms. Sarna.

15 25. BioCardia Lifesciences is informed and believes and on that basis alleges that
 16 defendant Seraph nVision, LLC is a Georgia Limited Liability company with a place of business
 17 at 2011 Lenox Road NE, Atlanta, GA 30306, whose Registered Agent is Tuff Yen 2011 Lenox
 18 Road NE, Atlanta, GA 30306, and is a former shareholder of nVision whose shares were acquired
 19 by Boston Scientific, 90% of the initial consideration for which was paid in cash and 10% held in
 20 escrow, and additional consideration for which shares is subject to an earn-out based on nVision's
 21 performance. Seraph nVision has ten (10) funds with over 330 investors. Seraph nVision has
 22 been investing in companies for fifteen (15) years and has closed 106 deals with 21 exits. Seraph
 23 nVision's minimum investment amount is \$250,000.

24 26. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 25 aforementioned Shareholder Defendants have best practices and standard operating procedures to
 26 perform "due diligence" by which they gather background information on startups seeking
 27 funding. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 28 Shareholder Defendants are sophisticated companies and investors focused on investments in or

1 acquisitions of early-stage companies (each an “Investment Target”) and, thus, are familiar with
2 the intellectual property issues that Investment Targets have. These include, among other things,
3 that a former employer of a founder of an Investment Target might have a claim to ownership of
4 the inventions claimed by the Investment Target, or that the inventions claimed by the Investment
5 Target may be based on trade secrets misappropriated from a former employer because, among
6 other things:

- a. They had been contractually assigned by the founder to the founder's former employer;
- b. They were co-invented with an employee or employees of the founder's former employer; or
- c. They were based on information learned at and/or belonging to the former employer.

JURISDICTION AND VENUE

13 27. BioCardia's complaint arises under the patent laws of the United States, 35 U.S.C.
14 §§ 101 et seq., specifically 35 U.S.C. § 256, the Defend Trade Secrets Act, 18 U.S.C. § 1836, and
15 the laws of the State of California.

16 28. This Court has subject matter jurisdiction over BioCardia's patent law claims
17 under 28 U.S.C. §§ 1331 and 1338(a), jurisdiction over BioCardia's Defend Trade Secrets Act
18 claim under 28 U.S.C. § 1331 and has supplemental jurisdiction over BioCardia's state law
19 claims under 28 U.S.C. § 1337.

20 29. This Court has general personal jurisdiction over Defendants because the acts out
21 of which this Action arises took place within this District.

22 30. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

INTRADISTRICT ASSIGNMENTS

24 31. Pursuant to Local Rule 3-2 (c), this case involves intellectual property rights and is
25 subject to assignment on a district wide basis.

FACTUAL BACKGROUND

Ms. Sarna's Education and Prior Work Experience

32. BioCardia Lifesciences is informed and believes and on that basis alleges that Ms.

1 Sarna's undergraduate major was molecular and cellular biology and that she does not have any
 2 graduate degrees.

3 33. Ms. Sarna's work at BioCardia dealt with tracking device failures, ensuring label
 4 compliance, and obtaining materials from vendors.

5 ***Ms. Sarna's Employment Agreement with BioCardia***

6 34. The facts and claims at issue in this case begin with Surbhi Sarna's employment
 7 with BioCardia. Ms. Sarna started consulting with BioCardia on September 15, 2008 pursuant to
 8 a Consulting Agreement executed on August 27, 2008. On November 3, 2008, Ms. Sarna started
 9 working as a full-time employee of BioCardia pursuant to the BioCardia standard Employment
 10 Agreement which she signed on October 29 YEAR? (the "Sarna Agreement"). A true and correct
 11 copy of the Sarna Agreement with Ms. Sarna's signature is attached hereto as **Exhibit A**.

12 35. In Section 2(a) of the Sarna Agreement, Ms. Sarna agreed "at all times during the
 13 term of my employment and thereafter, to hold in the strictest confidence, and not to use, except
 14 for the benefit of [BioCardia], or to disclose to any person, firm or corporation without written
 15 authorization of the Board of Directors of the Company, any Confidential Information of
 16 [BioCardia]." Ms. Sarna also agreed that "Confidential Information" meant any BioCardia
 17 "proprietary information, technical data, trade secrets or know-how, including, but not limited to,
 18 research, product plans, products, services, customer lists and customers (including, but not
 19 limited to, customers of [BioCardia] on whom I called or with whom I became acquainted during
 20 the term of my employment), markets, software, developments, inventions, processes, formulas,
 21 technology, designs, drawings, engineering hardware configuration information, marketing,
 22 finances or other business information disclosed to me by [BioCardia] either directly or indirectly
 23 ***in writing, orally or by drawings or observation of parts or equipment.***" (Emphasis added.)

24 36. In section 3(a) of the Sarna Agreement, Ms. Sarna agreed to complete Exhibit A,
 25 which was to contain a complete description of all inventions, original works of authorship,
 26 developments, improvements, and trade secrets which were made by her prior to her employment
 27 at BioCardia. Ms. Sarna executed Exhibit A and did not identify any inventions, original works
 28 of authorship, developments, improvements, and trade secrets which were made by her prior to

1 her employment at BioCardia. Ms. Sarna also explicitly stated that she had “No inventions or
2 improvements” to identify.

15 37. Ms. Sarna agreed in Section 3(b) of the Sarna Agreement to “promptly make full
16 written disclosure to the Company . . . and hereby assign to [BioCardia], or its designee, all my
17 right, title and interest in and to any and all inventions, original works of authorship,
18 developments, concepts, improvements or trade secrets” Ms. Sarna conceived of, developed or
19 reduced to practice during the time period Ms. Sarna was a BioCardia employee. Ms. Sarna
20 never disclosed, in writing or in any other form, any inventions, original works of authorship,
21 developments, concepts, improvements or trade secrets, that she conceived of, developed, or
22 reduced to practice during her employment at BioCardia. The first time BioCardia heard of any
23 of these patents or applications was in January 2019, when it became aware of, and began
24 investigating the extent of, Ms. Sarna’s misappropriation of BioCardia’s intellectual property.

25 38. The only exception to Ms. Sarna's contractual duty to assign inventions to
26 BioCardia in Section 3(b) of the Sarna Agreement was provided by Section 3(f), which stated
27 "the provisions of this Agreement requiring assignment of Inventions to [BioCardia] do not apply

1 to any invention which qualifies fully under the provisions of California Labor Code Section
2 2870" ("Section 2870"). Exhibit B to the Sarna Agreement sets out Section 2870 as follows:

EXHIBIT B

**CALIFORNIA LABOR CODE SECTION 2870
EMPLOYMENT AGREEMENTS; ASSIGNMENT OF RIGHTS**

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

Highly Confidential

BC-BSC_000051

16 Section 2870 does not apply to the intellectual property Ms. Sarna developed during her
17 employment at BioCardia because (a) she used BioCardia resources as part of the development
18 including, but not limited to, BioCardia trade secret information, BioCardia testing equipment,
19 BioCardia computers, BioCardia’s email system, and time she spent during normal business
20 hours developing the intellectual property; and (b) as explained in the sections describing
21 “BioCardia’s Business Activities” and the “Meeting Between Dr. Altman and Sarna,” the
22 intellectual property Ms. Sarna developed during her BioCardia employment related to
23 BioCardia’s business and to an actual or demonstrably anticipated research and development by
24 BioCardia. BioCardia engaged in extensive efforts to develop Dr. Peter Altman’s ideas relating
25 to women’s pelvic health, including, but not limited to, conducting extensive discussions with
26 several doctors about developing this technology, creating products like the Morph and Helix
27 catheters that could be adapted to be used to address women’s pelvic health issues, obtaining
28 several patents that explicitly indicate they relate to women’s pelvic health, and attempting to get

1 Ms. Sarna to further develop the technology Dr. Altman disclosed to her into additional
 2 BioCardia product offerings. Dr. Altman's conversations with doctors and with Ms. Sarna reflect
 3 "actual and demonstrably anticipated research or development" of BioCardia.

4 39. Under Section 3(f) of the Sarna Agreement, Ms. Sarna agreed to "advise
 5 [BioCardia] promptly in writing of any inventions that I believe meet the criteria in California
 6 Labor Code Section 2870 and not otherwise disclosed in Exhibit A." As noted above, Ms. Sarna
 7 did not disclose any inventions in Exhibit A to the Sarna Agreement. Ms. Sarna also never
 8 disclosed, in writing or any other form, any inventions she believed fell under Section 2870.

9 40. Ms. Sarna also agreed, in Section 3(d) of the Sarna Agreement, to "keep and
 10 maintain adequate and current written records of all Inventions made by me (solely or jointly with
 11 others) during the term of my employment with the [BioCardia]." Ms. Sarna agreed that "the
 12 records will be in the form of notes, sketches, drawings and any other format that may be
 13 specified by [BioCardia]" and "will be available to and remain the sole property of [BioCardia] at
 14 all times." Ms. Sarna did not maintain the information set out in Section 3(d) for the inventions
 15 she made during the term of her employment with BioCardia. Furthermore, Ms. Sarna did not
 16 make adequate and current written records of the inventions she made during her BioCardia
 17 employment available to BioCardia despite numerous requests for these materials.

18 41. In Section 3(e) of the Sarna Agreement, Ms. Sarna agreed to "assist [BioCardia],
 19 or its designee, at [BioCardia's] expense, in every proper way to secure [BioCardia's] rights in
 20 the Inventions and any copyrights, patents, mask work rights or other intellectual property rights
 21 relating thereto in any and all countries, including the disclosure to [BioCardia] of all pertinent
 22 information and data with respect thereto, the execution of all applications, specifications, oaths,
 23 assignments and all other instruments which [BioCardia] deems necessary in order to apply for
 24 and obtain such rights and in order to assign and convey to [BioCardia], its successors, assigns,
 25 and nominees the sole and exclusive rights, title and interest in and to such Invention." Ms. Sarna
 26 further agreed that her "obligation to execute or cause to be executed, when it is in my power to
 27 do so, any such instrument or papers shall continue after the termination of this Agreement." Ms.
 28 Sarna never assisted BioCardia to secure the rights in the inventions, copyrights, patents, mask

1 work rights or other intellectual property rights she developed during her employment at
 2 BioCardia.

3 42. Under Section 4(a) of the Sarna Agreement, Ms. Sarna agreed that during her
 4 employment with BioCardia she would not “engage in any other employment, occupation,
 5 consulting or other business activity directly related to the business in which [BioCardia] is now
 6 involved or becomes involved during the term of [Ms. Sarna’s] employment.” Nonetheless, Ms.
 7 Sarna founded nVision and worked as an employee and/or consultant of nVision while she was
 8 still employed by BioCardia. During her employment at BioCardia, Ms. Sarna devoted
 9 significant time and effort to nVision, often at the expense of her work for BioCardia, which
 10 nVision work was directly related to the business of BioCardia and was based on BioCardia
 11 confidential information disclosed by Dr. Peter Altman to her so that she would use that
 12 information for the benefit of BioCardia.

13 43. Section 4(b) of the Sarna Agreement required Ms. Sarna, during the term of her
 14 employment with BioCardia, to “not accept or perform any outside consulting work without first
 15 reporting the nature of and proposed time commitment of any such proposed outside consulting
 16 work.” Ms. Sarna never informed BioCardia of her work with nVision, nor of the time
 17 commitment of this work.

18 44. Ms. Sarna agreed, under Section 5 of the Sarna Agreement, that “at the time of
 19 leaving the employ of [BioCardia], I will deliver to [BioCardia] (and will not keep in my
 20 possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports,
 21 proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials,
 22 equipment, other documents or property, or reproductions of any aforementioned items developed
 23 by me pursuant to my employment with [BioCardia] or otherwise belonging to [BioCardia].”
 24 Despite this, on at least eleven separate dates Ms. Sarna emailed BioCardia confidential
 25 information to her personal Gmail account: (1) April 29, 2009; (2) July 7, 2009; (3) November
 26 20, 2009; (4) September 8, 2010; (5) October 24, 2010 (two emails); (6) December 29, 2010; (7)
 27 February 14, 2011; (8) March 11, 2011; (9) May 9, 2011; (10) September 8, 2011; and (11)
 28 December 19, 2011. Among the BioCardia confidential information were template documents

1 for risk analysis, product specifications, labelling verification, and document change order
 2 procedures.

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<u>EXHIBIT D</u>	
BioCardia, Inc. CONFLICT OF INTEREST GUIDELINES	
<p>It is the policy of BioCardia, Inc. to conduct its affairs in strict compliance with the letter and spirit of the law and to adhere to the highest principles of business ethics. Accordingly, all officers, employees and independent contractors must avoid activities which are in conflict, or give the appearance of being in conflict, with these principles and with the interests of the Company. The following are potentially compromising situations which must be avoided. Any exceptions must be reported to the President and written approval for continuation must be obtained.</p> <ol style="list-style-type: none"> 1. Revealing confidential information to outsiders or misusing confidential information. Unauthorized divulging of information is a violation of this policy whether or not for personal gain and whether or not harm to the Company is intended. (The Employment, Confidential Information and Invention Assignment Agreement elaborates on this principle and is a binding agreement.) 2. Accepting or offering substantial gifts, excessive entertainment, favors or payments which may be deemed to constitute undue influence or otherwise be improper or embarrassing to the Company. 3. Participating in civic or professional organizations that might involve divulging confidential information of the Company. 4. Initiating or approving personnel actions affecting reward or punishment of employees or applicants where there is a family relationship or is or appears to be a personal or social involvement. 5. Initiating or approving any form of personal or social harassment of employees. 6. Investing or holding outside directorship in suppliers, customers, or competing companies, including financial speculations, where such investment or directorship might influence in any manner a decision or course of action of the Company. 7. Borrowing from or lending to employees, customers or suppliers. 8. Acquiring real estate of interest to the Company. 9. Improperly using or disclosing to the Company any proprietary information or trade secrets of any former or concurrent employer or other person or entity with whom obligations of confidentiality exist. 10. Unlawfully discussing prices, costs, customers, sales or markets with competing companies or their employees. 	
Highly Confidential	
BC-BSC_0000521	

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11. Making any unlawful agreement with distributors with respect to prices.
 12. Improperly using or authorizing the use of any inventions which are the subject of patent claims of any other person or entity.
 13. Engaging in any conduct which is not in the best interest of the Company.

Each officer, employee and independent contractor must take every necessary action to ensure compliance with these guidelines and to bring problem areas to the attention of higher management for review. Violations of this conflict of interest policy may result in discharge without warning.

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45. In Section 8 of the Sarna Agreement, Ms. Sarna agreed “to diligently adhere to the Conflict of Interest Guidelines attached as Exhibit D” to the agreement. Exhibit D set out several “potentially compromising situations which must be avoided.” Furthermore, “any exceptions must be reported to the President and written approval for continuation must be obtained.” Ms. Sarna never reported any potentially compromising situation to the President of BioCardia, and she never received written approval to engage in any such action.

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1 47. Not only did Ms. Sarna fail to disclose any of the inventions she patented on
 2 behalf of nVision, she also affirmatively and falsely represented that she did not have any
 3 inventions to report to BioCardia. Exhibit C to the Sarna Agreement was a “Termination
 4 Certification,” which Ms. Sarna executed on January 4, 2012, the last day she worked for
 5 BioCardia. In this document, Ms. Sarna certified that she “complied with all the terms of the
 6 Company’s Employment Confidential Information and Invention Assignment Agreement signed
 7 by me, including the reporting of any inventions and original works of authorship (as defined
 8 therein), conceived or made by me (solely or jointly with others) covered by that agreement.” At
 9 no point during or after her employment with BioCardia did Ms. Sarna identify any inventions
 10 she made during the time when she was a BioCardia employee.

11

<u>EXHIBIT C</u>	
BioCardia, Inc. TERMINATION CERTIFICATION	
<p>This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items belonging to BioCardia, Inc., its subsidiaries, affiliates, successors or assigns (together, the “Company”).</p> <p>I further certify that I have complied with all the terms of the Company’s Employment Confidential Information and Invention Assignment Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined therein), conceived or made by me (solely or jointly with others) covered by that agreement.</p> <p>I further agree that, in compliance with the Employment, Confidential Information and Invention Assignment Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants or licensees.</p> <p>I further agree that for twelve (12) months from this date, I will not hire any employees of the Company and I will not solicit, induce, recruit or encourage any of the Company’s employees to leave their employment.</p> <p>Date: <u>01/04/2012</u></p> <p> (Employee's Signature)</p> <p><u>Saranya Sarna</u> (Type/Print Employee's Name)</p>	
Highly Confidential	BC-BSC 0000520

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48. Ms. Sarna’s Termination Certification also represented that she did not have in her possession, nor had she failed to return, “any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items belonging to BioCardia.”

1 Ms. Sarna made this representation despite that barely two weeks earlier she forwarded an email
 2 to her personal Gmail account attaching a BioCardia template for a verification test plan for the
 3 Helix catheter. BioCardia Lifesciences is informed and believes and on that basis alleges that
 4 corresponding nVision documents adopt the structure, format, and even language of this
 5 BioCardia template.

6 49. Ms. Sarna's Termination Certification also represented that she "will preserve as
 7 confidential all trade secrets, confidential knowledge, data or other proprietary information
 8 relating to products, processes, know-how, designs, formulas, developmental or experimental
 9 work, computer programs, data bases, other original works of authorship, customer lists, business
 10 plans, financial information or other subject matter pertaining to any business of" BioCardia.

11 ***BioCardia's Business Activities***

12 50. The BioCardia Entities' product portfolio and marketing efforts focus on the use of
 13 its diagnostic strategies, biotherapeutics, and catheter technologies like its Morph and Helix
 14 products. The intellectual property Ms. Sarna claimed as her own and assigned to nVision and
 15 the products that Ms. Sarna and nVision developed based on that intellectual property, all relate to
 16 catheter products. As a result, Ms. Sarna's patents, and patent applications, and alleged
 17 inventions, all relate to BioCardia's "business" as that term is used in California Labor Code
 18 Section 2870, as well as to that of the other BioCardia Entities. The relevant business for
 19 purposes of Section 2870 is catheter medical devices.

20 51. Regardless, BioCardia, as well as the other BioCardia Entities, also has devoted
 21 considerable resources and effort to the treatment of other conditions, including women's pelvic
 22 health issues. The treatment of women's pelvic health conditions is a part of BioCardia's
 23 "business" and "actual and demonstrable research or development" (as those terms are used in
 24 California Labor Code Section 2870).

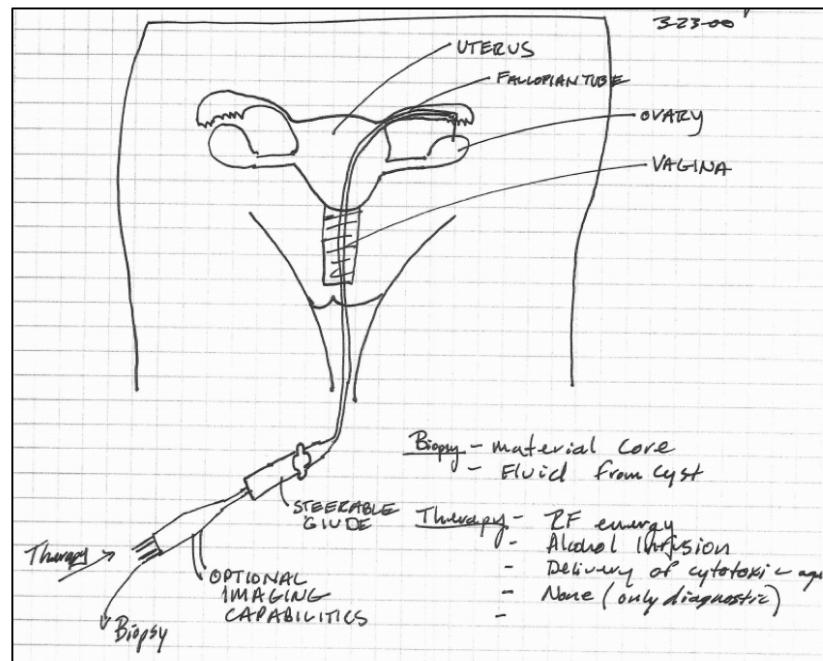
25 52. Almost from its inception, BioCardia investigated whether the catheter technology
 26 it was developing could be used to treat gynecological conditions. Dr. Simon Stertzer, one of the
 27 most renowned cardiologists in the world, has continuously served as a consultant for BioCardia
 28 and its predecessor from 1999 to the present. Among his many accomplishments, Dr. Stertzer

1 pioneered interventional cardiology in the 1970s, performed the first angioplasty, founded
2 Arterial Vascular Engineering (which he later sold to Medtronic for nearly \$5 billion), and
3 currently is a Professor Emeritus at Stanford University. In the years following his
4 groundbreaking work, Dr. Stertzer observed several doctors adapting the devices and procedures
5 he developed for the heart for other parts of the body. Recognizing the enormous business
6 opportunity this presented, Dr. Stertzer began searching for opportunities to develop BioCardia
7 cardiovascular applications for other parts of the body.

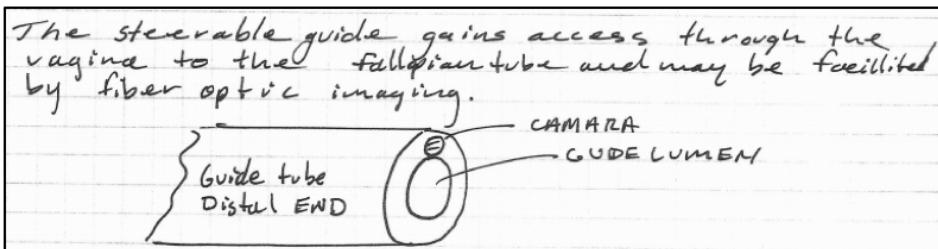
8 53. That is why in March 2000, Dr. Stertzer called Dr. Peter Altman, the CEO of
9 BioCardia, to discuss the possibility of adapting BioCardia's catheter offerings for gynecological
10 applications. Dr. Stertzer believed that there was a need to improve the ability to diagnose pre-
11 cancerous and cancerous cysts in a less invasive fashion, as well as new ways to treat them. At
12 the time, the only way to test for ovarian cancer was to perform surgery or an invasive
13 transcutaneous or transvaginal biopsy, which were, burdensome for the patient, and carry a host
14 of risks. In Dr. Stertzer's opinion, BioCardia's Helix and Morph catheter technologies and
15 interactive design enabled sufficient control and flexibility to navigate fallopian tubes and
16 contribute to providing this less invasive diagnosis.

17 54. Dr. Altman, intrigued by the idea, recorded Dr. Stertzer's idea as the first
18 paragraph of a March 23, 2000 lab notebook entry ("the lab notebook disclosure"). In the
19 following pages of the entry, Dr. Altman set out the details of how the Helix and Morph catheters
20 could be adapted for gynecological applications. As depicted in the images in the lab notebook
21 disclosure, and described in the accompanying text, smaller versions of BioCardia's Morph and
22 Helix steerable catheters could be inserted into a vagina and guided to the fallopian tubes,
23 fimbria, and ovaries. By adding imaging, diagnostic, and treatment capabilities at the distal end
24 of the catheter, practitioners could observe, test, and treat ovarian state.

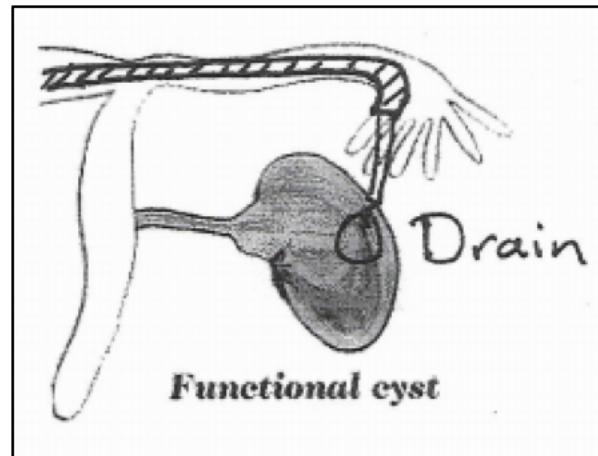
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55. The lab notebook disclosure detailed “optional imaging capabilities,” such as ultrasound technology or a fiber optic camera, to steer the catheter and take images inside the vagina. For example, the notebook notes that “rotating ultrasound probes could be used to guide the catheter to obtain [a] high resolution view of [the] ovarian cyst.” It also notes that “intrafallopian ultrasound” could be used “to determine if further intervention is required.” The notebook also noted that fiber optic imaging could also be used to steer the catheter and capture images within the vagina.



24 The diagnostic capabilities described in the lab notebook included both “a fluid biopsy probe,
 25 such as a hollow helical needle may be rotated into the ovary to obtain a sample of the cyst. Such
 26 a probe could also be used to drain the cyst.” The notebook also noted that solid biopsies, such as
 27 “material core” samples, could also be obtained by the described catheter device.
 28



56. The lab notebook disclosure also described a variety of treatment capabilities administered at the end of the catheter. For example, the catheter could “be used to deliver RF energy to kill tissue in the cyst, or to deliver alcohol or cytotoxic agents designed to introduce necrosis locally.” In addition, the notebook notes that when the catheter is in position it may be used to advance “therapeutic probes.”

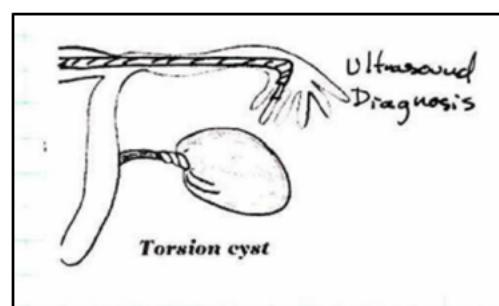
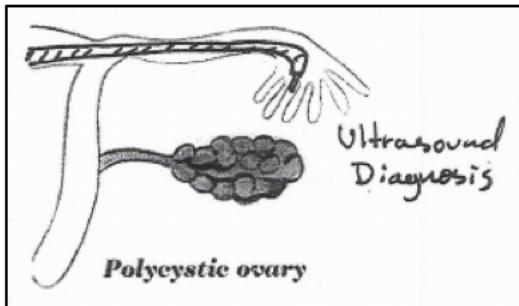
57. In addition to a variety of imaging, biopsy, and treatment capabilities, the lab notebook disclosure also noted different locations where the catheter could collect images, diagnose conditions, and administer treatment. For example, the notebook notes that the catheter can be used for “intrafallopian” diagnosis and treatment:

19 Dermoid, cystadenoma, endometrial polycystic disease, pre-cancerous and cancerous 20 cysts may be viewed w/ intrafallopian ultrasound to determine if further intervention is 21 required.

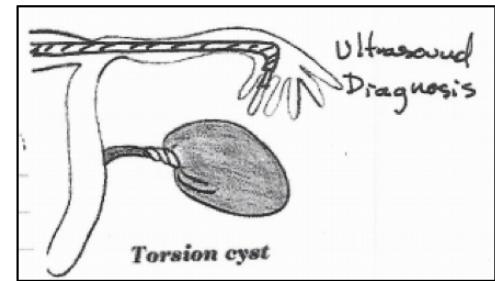
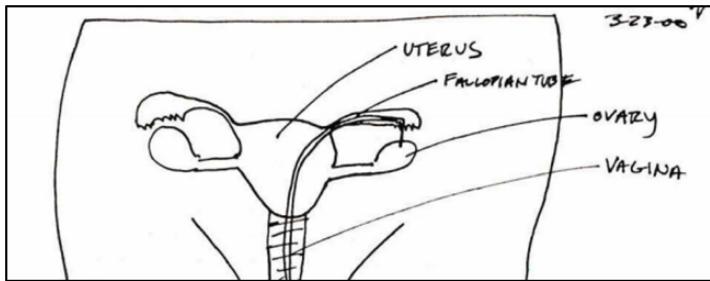
22 Later, the notebook explains that the catheter can be directed to the fallopian tube, where it can 23 diagnose conditions and administer treatments:

24 The steerable guide gains access through the vagina to the fallopian tube and may be 25 [facilitated] by fiber optic imaging. The steerable guide once position[ed] may be used to 26 advance imaging probes such as rotating ultrasound transducers, biopsy probes, 27 therapeutic probes, or combinations of these.

28 The lab notebook also describes advancing the catheter to the fimbria of the fallopian tubes (i.e., 29 the fingerlike structures at the end of the fallopian tube that surround the ovaries).



7 The March 2000 lab notebook also describes extending past the fimbria to the ovaries for
 8 imaging, diagnosis and treatment. For example, rotating ultrasound probes could be used to
 9 determine if an ovarian cyst is functional or “another type that requires therapy.” The lab
 10 notebook also discusses extending a biopsy probe into the ovary to obtain a sample of a cyst.



16 58. As Dr. Stertz suggested, much of the technology BioCardia develops and
 17 markets can be adapted for use in the applications disclosed in the lab notebook. Both the Morph
 18 and Helix catheters, which BioCardia spent decades developing and refining, are steerable guide
 19 catheters like the one described in the lab notebook. That these catheters are used for
 20 cardiovascular treatments does not negate their equal applicability to gynecological treatments.
 21 Of course, catheters that are used in the heart would have to be resized and modified before they
 22 could be used in smaller anatomical structures like fallopian tubes.

23 59. BioCardia also devoted significant resources to developing technology that would
 24 deliver therapeutic substances for the treatment of cancer at the distal end of a catheter, another
 25 feature of the inventions and trade secrets discussed in the March 2000 lab notebook entry. For
 26 example, on December 6, 2005, BioCardia filed a patent application for local catheter-based
 27 therapy for cancer including delivery of leading blockbuster agents at the distal tip of the catheter.

1 For the next eight years, BioCardia prosecuted this application until it issued as U.S. Patent No.
 2 8,529,550 ("the '550 patent") on September 10, 2013. The '550 patent included a claim for:

3 A catheter system comprising: a catheter having a proximal end and a distal end; a
 4 drug delivery structure disposed on the distal end of the catheter, where the
 5 structure is a hollow structure with one or more apertures communicating from the
 6 interior to the exterior of said hollow structure, and a reservoir of a therapeutic
 7 agent within said drug delivery structure, said therapeutic agent comprising one of
 8 antagonists to angiogenic agents, cytotoxic agents, anti-Her-2, and anti CD20, and
 9 tumor necrosis factors; said drug delivery structure being disengageable from the
 10 distal end of the catheter; a mechanism at the proximal end of the catheter for
 11 disengaging said drug delivery structure from the distal end of the catheter; and a
 12 fixation means on said drug delivery structure that may be used within a body of a
 13 patient to implant the drug delivery structure to a depth within an intended tissue
 14 within the body of a patient

15 60. The day after the '550 patent issued, Dr. Altman reached out to Dr. Manuel
 16 Rodriguez, a Vice President at Genentech involved with the commercial development of Avastin,
 17 one of the most valuable cancer treatment drugs in the world. In that email, Dr. Altman
 18 mentioned that BioCardia had just received the '550 patent, and that this invention together with
 19 BioCardia's catheter technology could "enable local delivery of therapeutic agents with ease into
 20 the ovary." Dr. Rodriguez responded favorably to this email, and suggested meeting to discuss
 21 the following week. In the following weeks Drs. Altman and Rodriguez engaged in several
 22 conversations about the possibility of further developing BioCardia technology to deliver
 23 therapeutic agents as part of treatments for ovarian cancer.

24 61. The same day that Dr. Altman emailed Dr. Manuel Rodriguez, he sent a nearly
 25 identical email to Dr. Ian McNiece, a professor at the University of Texas MD Andersen Cancer
 26 Center, the largest cancer center in the United States. Just as with Dr. Rodriguez, this email
 27 began an extensive dialogue between Drs. Altman and McNiece about collaborating to further
 28 develop BioCardia catheters for gynecological applications. In fact, Dr. McNiece was so
 intrigued by the possibilities of this collaboration that he invited Dr. Altman to visit him at MD
 Andersen for a day-long meeting to discuss this topic. Dr. Altman flew to Texas for this meeting,
 and the two had several follow-up discussions about using BioCardia technology in gynecological
 applications.

1 62. BioCardia also engaged in extensive communications with Dr. Camran Nezhat
2 about further adapting BioCardia technology for gynecological applications. Drs. Nezhat and
3 Altman had longstanding communications on this topic from the present all the way back to 2008.
4 In fact, in December 2008, Dr. Stertzer connected Dr. Altman with Dr. Nezhat to begin this
5 development. Dr. Altman reached out to Dr. Nezhat to see if they could “connect on local
6 delivery aspects of [BioCardia’s] business as it relates to OB GYN.” BC-BSC_0385881. Dr.
7 Nezhat’s response was swift and enthusiastic:

19 *Id.* Drs. Altman and Nezhat participated in an hour-long meeting the following week and had
20 several follow-up conversations from that meeting. BC-BSC_0385880-81. Dr. Nezhat was so
21 excited about the possibilities BioCardia's catheters presented in the OB GYN space, that, in
22 January 2009, he attempted to set up a presentation where he and Dr. Altman could discuss the
23 options BioCardia catheters offered with reproductive endocrinologists at Stanford University.

1 **From:** Lori Arnone <nezhatnursing@yahoo.com>
2 **Sent:** Friday, January 23, 2009 3:33 PM
3 **To:** Peter Altman <paltman@biocardia.com>
4 **Subject:** RE: Dr Nezhat

5 Dr. Altman

6 I am still working on getting the Stanford REI doctors information on your product and perhaps trying to get a time
7 for them to get together with you and Dr. Nezhat for a presentation.

8 Do you have something you can send me via email that is a brief summary of your product that I can include in my
9 email to them?

10 Thank you

11 Lori Arnone CMA-C, CNA
12 Clinic Supervisor
13 Patient Care Manager
14 Surgical Coordinator

15 Dr. Altman continued to discuss collaboration opportunities in the OB GYN space with Dr.
16 Nezhat, as evidenced by Dr. Altman's May 2010 invitation for Dr. Nezhat to visit BioCardia:

17 **From:** Peter Altman
18 **Sent:** Wednesday, May 19, 2010 12:51 PM
19 **To:** Camran R Nezhat MD.FACOG.FACS. <cnezhat@stanford.edu>
20 **Subject:** BioCardia

21 Dear Camran,
22 I would like to extend an invitation for you to visit us at BioCardia and talk about applications of our technologies
23 in OB/GYN. Andrew Mackenzie is here as VP of OPS and I would invite him to join us. Alternatively, Andy and I
24 could take you to EVVIA for dinner to discuss.

25 Best regards,
26 Peter

27 Peter Altman, PhD
28 President and CEO
29 BioCardia, Inc.
30 125 Shoreway Rd. Ste B
31 San Carlos, CA 94070
32 650-226-0121 direct
33 650-255-4532 cell
34 650-226-0120 main
35 650-631-3731 fax
36 www.biocardia.com

37 63. BioCardia also engaged in communications with other practitioners about adapting
38 BioCardia technology for gynecological applications, including Dr. Mark Lovitch, Dr. John
39 Urquhart.

40 64. Over the years, BioCardia has spent considerable time and resources on obtaining
41 several patents that described applications in the women's pelvic health space based on work that
42 was occurring at BioCardia when Ms. Sarna was employed there. For example, BioCardia filed
43 65

1 U.S. Patent Application No. 13/965,807 on August 13, 2013 and prosecuted the application until
 2 it issued as U.S. Patent No. 9,078,994 on July 14, 2015. BioCardia also filed U.S. Patent
 3 Application No. 13/915,516 on June 11, 2013 and prosecuted the application until it issued as
 4 U.S. Patent No. 9,022,977. On August 13, 2013, BioCardia filed U.S. Patent Application No.
 5 13/965,789, which it prosecuted until the application issued as U.S. Patent No. 9,017,284 on
 6 April 28, 2015. BioCardia filed U.S. Patent Application No. 13/965,800 on August 13, 2013 and
 7 prosecuted the application until it issued as U.S. Patent No. 9,011,373 on April 21, 2015. On July
 8 22, 2008, BioCardia filed U.S. Patent No. 12/177,338, which it prosecuted until the application
 9 issued as U.S. Patent No. 8,939,960 on January 27, 2015. BioCardia also filed patent applications
 10 which described women's pelvic health applications before Ms. Sarna joined BioCardia. For
 11 example, BioCardia filed U.S. Patent Application No. 11/016,448 on December 17, 2004, and
 12 prosecuted the application until it issued as U.S. Patent No. 7,402,151 on July 22, 2008. Each of
 13 these patents explicitly discusses their application to the field of women's pelvic health, in
 14 particular to "uterine fibroid biopsy and ablation." Collectively, these patents alone represent a
 15 sustained effort over more than a decade and substantial financial outlay by BioCardia.

16 ***BioCardia's Disclosure of Trade Secrets to Ms. Sarna***

17 65. In addition to BioCardia's considerable efforts in the women's pelvic health space,
 18 conceiving new methods, developing new catheter-based technology, conferring with several
 19 practitioners and companies about the development of women's pelvic health products, and
 20 obtaining at least seven patents which described applications in the women's pelvic health space,
 21 it also attempted (though unsuccessfully) to get Ms. Sarna to work on these efforts for BioCardia.

22 66. Ms. Sarna was not a model employee during her time at BioCardia. She was often
 23 absent from work, citing a repertoire of excuses that BioCardia Lifesciences is informed and
 24 believes and on that basis alleges were often untrue and pretextual to give Ms. Sarna more time to
 25 work on her own projects while an employee of BioCardia. She had such difficulty getting to
 26 work by 9:00 a.m. that her supervisors modified her work schedule to start at 9:30 a.m. and end at
 27 5:30 p.m. On at least two occasions she was reprimanded in writing for tardiness even after this
 28 adjustment was made. Co-workers complained that she would disappear for long stretches during

1 the day, causing delays in projects. Even when Ms. Sarna was at work, she had trouble focusing
 2 on the tasks assigned to her and would often make costly mental errors.

3 67. Thinking she needed additional motivation, and knowing of her desire to work on
 4 women's health applications, Dr. Altman arranged a meeting with Ms. Sarna, in or around May
 5 2009, where he spent well over an hour explaining BioCardia inventions and trade secrets in the
 6 hope that she would devote a significant portion of her worktime to further development of these
 7 technologies. In particular, Dr. Altman showed Ms. Sarna the March 2000 lab notebook entry,
 8 showed her other pages in the lab notebook describing relevant technology, and provided
 9 additional trade secrets based on his considerable knowledge and experience with gene
 10 expression profiling, all of which was intended to help Ms. Sarna further develop a catheter
 11 system for a less invasive method for testing and treating ovarian cancer on behalf of BioCardia.

12 68. During that meeting, Dr. Altman discussed the potential for early diagnostic and
 13 local therapy for ovarian cancer with Ms. Sarna because BioCardia anticipated research and
 14 development regarding the ovarian diagnostic/therapy approach detailed in the lab notebook.
 15 Without early diagnosis, local therapy for the treatment of ovarian cancer is ineffective because of
 16 metastasis. This concept underlines why BioCardia's core efforts focused on pre-metastasis
 17 diagnostics to identify the disease state.

18 69. BioCardia intended that Ms. Sarna herself was going to participate in that research
 19 and development, which is why Dr. Altman disclosed the BioCardia trade secrets to her during
 20 the meeting in or around May 2009. That is also why Dr. Altman shared additional laboratory
 21 notebook pages with her in the same meeting session relating to the potential ramifications of
 22 early diagnosis and the potential for local therapy. The images in the March 2000 lab notebook
 23 entry clearly show BioCardia's Morph and Helix products passing through the uterus to be used
 24 for fallopian tube procedures. The Morph and Helix were products Ms. Sarna worked on a daily
 25 basis, albeit for cardiovascular applications. Further, at least three other employees of
 26 BioCardia—including David Snow, David Sanderson, and Andy Mackenzie—were aware that
 27 Dr. Altman had spent time with Ms. Sarna proposing that she work on a women's health project.

28 70. During the course of the meeting with Ms. Sarna in or around May 2009, Dr.

1 Altman disclosed dozens of BioCardia inventions and trade secrets through his explanation of the
2 March 2000 lab notebook entry, other pages of the lab notebook, including pages 1-4 of the lab
3 notebook setting out inventive concepts about controlled-release drug delivery matrices, and his
4 explanation of cutting-edge technical developments in gene expression profiling which enabled
5 detection of cancer from the small number of cells collected from a fallopian tube by the catheter.
6 While the list below sets out specific aspects of the inventions and trade secrets that Dr. Altman
7 disclosed to Ms. Sarna, this intellectual property as a whole, and the subject matter discussed
8 during Dr. Altman's meeting with Ms. Sarna, generally describes a method of obtaining a tissue
9 sample from a fallopian tube for determining ovarian state, including:

- 10 a. Diagnostic method of using a catheter inserted into a fallopian tube to obtain a
11 solid or liquid biopsy of potentially diseased ovarian tissue or cells by, for
12 example, advancing a guide catheter into the uterus to gain access to the ostium of
13 a fallopian tube, advancing a second catheter system through the guide catheter
14 and obtaining a sample of tissue through the second catheter that is from the ovary
15 which may be analyzed biologically;
- 16 b. Diagnostic method of inserting a catheter with imaging capability, such as
17 cameras, fiber optics, or ultrasound imaging, on its distal end into a fallopian tube,
18 by, for example, advancing a guide catheter into the uterus to gain access to the
19 ostium of a fallopian tube, advancing a second catheter system through the guide
20 catheter with ultrasound imaging, to enable navigation and sampling for biologic
21 analysis;
- 22 c. Diagnostic method of inserting a catheter with imaging capability, such as
23 cameras, fiber optics, or ultrasound imaging, on its distal end into a fallopian tube
24 by, for example, advancing a guide catheter into the uterus to gain access to the
25 ostium of a fallopian tube, advancing a second catheter system through the guide
26 catheter with imaging capabilities to enable navigation and sampling for biologic
27 analysis;
- 28 d. Diagnostic method of inserting a catheter with imaging capability, such as

1 cameras, fiber optics, or ultrasound imaging, on its distal end into a fallopian tube
2 by, for example, advancing a guide catheter into the uterus to gain access to the
3 ostium of a fallopian tube, advancing a second catheter system through the guide
4 catheter, using the imaging capabilities to enable navigation and imaging of
5 ovarian cysts or tumors;

6 e. Diagnostic method of inserting a catheter with imaging capability, such as
7 cameras, fiber optics, or ultrasound imaging, on its distal end into a fallopian tube,
8 by, for example, advancing a guide catheter into the uterus to gain access to the
9 ostium of a fallopian tube, advancing a second catheter system through the guide
10 catheter, using the imaging capability to enable navigation and imaging of ovarian
11 cysts or tumors;

12 f. Diagnostic method of inserting a catheter imaging capability, such as cameras,
13 fiber optics, or ultrasound imaging, on its distal end into a fallopian tube by, for
14 example, advancing a guide catheter into the uterus to gain access to the ostium of
15 a fallopian tube, advancing a second catheter system through the guide catheter
16 with ultrasound imaging, to enable navigation and imaging of an ovarian cyst or
17 tumor, and to take an action selected from the set of (1) characterizing said cyst or
18 said tumor or (2) planning therapeutic intervention of said cysts and said tumors;

19 g. Diagnostic method of inserting a catheter imaging capability, such as cameras,
20 fiber optics, or ultrasound imaging, on its distal end into a fallopian tube by, for
21 example, advancing a guide catheter into the uterus to gain access to the ostium of
22 a fallopian tube, advancing a second catheter system through the guide catheter
23 with imaging capability to enable navigation and imaging of ovarian cysts or
24 tumors and to take an action selected from the set of (1) characterizing said cyst or
25 said tumor or (2) planning therapeutic intervention of said cysts and said tumors;

26 h. Diagnostic method and devices for advancing a tissue-sampling element to the
27 fallopian tube, fimbria, or ovary to take a solid or fluid tissue sample, by, for
28 example, advancing a guide catheter into the uterus to gain access to the ostium of

1 a fallopian tube, advancing a second catheter system having a tissue-sampling
2 element through the guide catheter and advancing the tissue-sampling element to
3 obtain a liquid or solid sample for biologic analysis;

4 i. Diagnostic method and devices to be used for tissue-sampling from the fallopian
5 tube, fimbria, or ovary by taking a solid or fluid tissue sample, by, for example,
6 advancing a guide catheter into the uterus to gain access to the ostium of a
7 fallopian tube, advancing a second catheter system having a penetrating element
8 through the guide catheter and advancing the penetrating element consisting of a
9 hollow helical needle into the fallopian tube, fimbria, or ovary to obtain a liquid or
10 solid sample for biologic analysis;

11 j. Diagnostic method and devices to be used for tissue-sampling from the fallopian
12 tube, fimbria, or ovary by taking a solid or fluid tissue sample, by, for example,
13 advancing a guide catheter into the uterus to gain access to the ostium of a
14 fallopian tube, advancing a second catheter system having a tissue-sampling
15 element through the guide catheter and advancing the tissue-sampling element into
16 the fallopian tube, fimbria, or ovary to obtain a liquid or solid sample for biologic
17 analysis;

18 k. Therapeutic method of inserting a catheter with imaging capability, such as
19 cameras, fiber optics, or ultrasound imaging, on its distal end into a fallopian tube
20 to advance a therapy, by, for example, advancing a guide catheter into the uterus to
21 gain access to the ostium of a fallopian tube, advancing a second catheter system
22 through the guide catheter with imaging capability, to enable navigation and
23 imaging of an ovarian cyst or tumor, and to take an action selected from the set of
24 (1) ablating regions of the ovary, (2) delivering controlled release drug delivery
25 matrices to relevant tissue in and around the ovary, or (3) draining the tissue mass
26 penetrated by the hollow penetrating element;

27 l. Therapeutic method of inserting a catheter with imaging, such as ultrasound
28 imaging, on its distal end into a fallopian tube to advance a therapy, consisting of

1 advancing a guide catheter into the uterus to gain access to the ostium of a
2 fallopian tube, advancing a second catheter system through the guide catheter with
3 ultrasound imaging, to enable navigation and imaging of an ovarian cyst or tumor,
4 and to take an action selected from the set of (1) ablating regions of the ovary
5 using radiofrequency energy or (2) ablating the regions of the ovary by the
6 delivery of alcohol;

7 m. Therapeutic method and devices to be used through the vagina, uterus, and
8 fallopian tube to advance a hollow element from a catheter to assist with tissue
9 sampling, where, for example, the hollow element is connected to a fluid conduit
10 within the catheter system that is connected to a reservoir outside of the body;

11 n. Therapeutic strategy for identifying precancerous and cancerous growths based on
12 a diagnosis performed from a locally-obtained sample before evidence of
13 metastasis has appeared by, for example, obtaining a local biological sample
14 derived from the ovary or adjacent fluids to determine that the ovary has a
15 significant possibility of having a malignant cancer, and using this information to
16 determine appropriate treatments;

17 o. Therapeutic strategy for delivering ablative compounds such as alcohol or ablative
18 energy through a catheter system passed through a vagina, uterus, and fallopian
19 tubes to treat disease or a condition of the ovary in which a penetrating element is
20 advanced into the fallopian tubes, fimbria, or ovary; and

21 p. The existence of a market need to improve the ability to diagnose precancerous
22 and cancerous cysts minimally invasively with details on the ramifications for
23 therapy with early diagnosis, and strategies for doing so that align with new
24 biological measurement technologies in gene expression and genetic analysis that
25 enable a small sample to identify the presence of disease, including details on the
26 players in the gene diagnosis space looking at blood (CareDx), solid tumor tissues
27 (Genomic health), and cells sloughing from within a body lumen conduit such as
28 that of a bowel movement which passes through the colon (EXACT Sciences).

1 71. Although Ms. Sarna has admitted that Dr. Altman met with her, at least David
 2 Sanderson, Andrew Mackenzie, and David Snow knew that Dr. Altman met with Ms. Sarna to
 3 discuss a BioCardia project related to women's health. BioCardia Lifesciences is informed and
 4 believes and on that basis alleges that Mr. Sanderson, Mr. Mackenzie, and Mr. Snow will
 5 corroborate that this meeting took place.

6 72. BioCardia also disclosed trade secrets to Ms. Sarna through her day-to-day work
 7 for the company. In particular, BioCardia internally developed a testing instrument that used a
 8 ball and spring assembly to test the internal diameter of catheters. The particulars of this testing
 9 device are set out in the 04960-A TSPEC, titled "Ball Fixture, 0.0710" Internal Inspection,"
 10 which was produced at BC-BSC_0000379-381. Ms. Sarna used this device as part of her work
 11 for BioCardia, and later incorporated the ball-and-spring feature in nVision patents and/or patent
 12 applications. In particular, BioCardia shared the following trade secret with Ms. Sarna by
 13 allowing her to use the ball-and-spring testing instrument: a catheter system which includes a
 14 distal spring element on its end and having a round spherical ball mounted on the spring to avoid
 15 damage to the lumen through which it is passed, by, for example, having of a catheter shaft with a
 16 hollow lumen, containing a fluid conduit, which passes through a helical metal spring on its distal
 17 end attached to a small ball attached to the distal-most end.

18 73. Finally, BioCardia disclosed trade secrets to Ms. Sarna in the form of template
 19 documents that Ms. Sarna used as part of her work on behalf of BioCardia. BioCardia strictly
 20 controlled access to these documents, and only used them internally. Ms. Sarna forwarded many
 21 of these templates to her personal Gmail account. BC-BSC_0002529-44; BC-BSC_0002944-
 22 3001; BC-BSC_0011792-802; BC-BSC_0013063-119; BC-BSC_0013557-84; BC-
 23 BSC_0013585-600; BC-BSC_0014062-63; BC-BSC_0014176-77; BC-BSC_0014339-40; BC-
 24 BSC_0014509-14; BC-BSC_0014798-819; BC-BSC_0015207-238. BioCardia Lifesciences is
 25 informed and believes and on that basis alleges that corresponding nVision documents adopt the
 26 structure, format, and even language of these BioCardia template documents. In particular,
 27 BioCardia shared the following trade secret with Ms. Sarna by allowing her to use BioCardia
 28 template documents: BioCardia template documents sent to Ms. Sarna's personal email account,

1 consisting of the following templates: Risk Analysis, Product Specification, Labelling
 2 Verification, and Document Change Order procedures.

3 ***Ms. Sarna's Misappropriation of BioCardia Trade Secrets During Her Employment at***
 4 ***BioCardia***

5 74. While it turned out that Ms. Sarna did further develop the BioCardia intellectual
 6 property Dr. Altman shared with her, she did not do so on behalf of BioCardia.

7 75. On Monday, September 28, 2009, approximately four months after Dr. Altman
 8 described to Ms. Sarna the women's pelvic health intellectual property in his lab notebook, Ms.
 9 Sarna engaged Pacific Crest Law Partners, LLP. That same day, Pacific Crest Law Partners
 10 incorporated nVision Medical Corporation ("nVision") in Delaware on Ms. Sarna's behalf. Ms.
 11 Sarna never informed BioCardia that she had formed her own corporation.

12 76. On Tuesday, September 29, 2009, the day after incorporating nVision, Ms. Sarna
 13 called in sick. Later that same day, Ms. Sarna filed a provisional patent application in the United
 14 States Patent and Trademark Office ("USPTO") that she assigned to nVision in a December 26,
 15 2009 Technology Transfer Agreement. Ms. Sarna never informed BioCardia that she filed this
 16 provisional patent application. Even when BioCardia finally learned of the provisional patent
 17 application in 2020 and requested production of the application and any other related documents
 18 as part of discovery in the related litigation, Ms. Sarna did not produce the materials. This is
 19 despite Ms. Sarna's promise, in Section 3(d) of the Sarna Agreement, to "keep and maintain
 20 adequate and current written records of all Inventions made by me (solely or jointly with others)
 21 during the term of my employment with [BioCardia]" and her agreement that "the records will be
 22 in the form of notes, sketches, drawings and any other format that may be specified by
 23 [BioCardia]" and "will be available to and remain the sole property of [BioCardia] at all times."

24 77. On Tuesday, February 9, 2010, Ms. Sarna took another sick day off with a second
 25 ailment. Later that same day, Ms. Sarna signed an "Action by Sole Director of nVision Medical
 26 Corporation," which gave Pacific Crest Law Partners, LLP a warrant to acquire 40,000 shares in
 27 exchange for up to \$15,000 in legal fees.

28 78. On Friday, December 3, 2010, Ms. Sarna emailed David Snow and Miranda Peto

1 to inform them that she would be working from home because she was ill with a third ailment.
 2 Later that same day, Ms. Sarna emailed Anula Jayasuriya, then a member of the Board of
 3 Trustees of Astia and later the Founder and Managing Director of EXXclaim Capital, to thank her
 4 for an introduction to Linda Greub, then a partner at LMN Ventures, LLC.¹ The date on the email
 5 is "Sat 12/4/2010 12:02:36 AM Coordinated Universal Time," which corresponds to 5:02 p.m. on
 6 Friday, December 3, 2010. Because Ms. Sarna could not arrive at work by 9:00 a.m., BioCardia
 7 allowed her workday to span from 9:30 a.m. to 5:30 p.m. Consequently, this email not only was
 8 sent using BioCardia's email service, but was also sent during Ms. Sarna's normal working hours.
 9 In that same email, Ms. Sarna also asked Ms. Greub for help "conceptualizing a product which
 10

11 **Sent: Sat 12/4/2010 12:02:36 AM Coordinated Universal Time**

12 Anula,
 13 Thank you for the introduction.
 14 Linda,
 15 Pleasure to e-meet you. I'm currently conceptualizing a product which will diagnose fallopian tube occlusion in the office of the reproductive specialist. I
 16 would love to run the idea by you and get your thoughts. I currently work in San Carlos and would be happy to meet you wherever it is most convenient.
 17 Thanks for your time,
 18 Surbhi
 19 cell 408.655.3577
 20 This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended
 21 recipient. Any review, copying, or distribution of this email (or any attachments thereto) by others is strictly prohibited. If you are
 22 not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any
 23 attachments thereto.

24 will diagnose fallopian tube occlusion in the office of the reproductive specialist." BioCardia
 25 found this email among Ms. Sarna's deleted emails.

26 79. Although the email references an earlier email introduction to Ms. Greub by Ms.
 27 Jayasuriya, that email is nowhere to be found in Ms. Sarna's BioCardia email account.

28 80. BioCardia Lifesciences is informed and believes and on that basis alleges that Ms.
 29 Sarna deleted Ms. Jayasuriya's email introducing Ms. Greub and emptied her deleted email folder
 30 to permanently eliminate that email, but forgot to empty the folder after she deleted her email
 31 requesting assistance from Ms. Greub. These communications with Ms. Jayasuriya and Ms.

27
 28 ¹ EXXclaim Capital and LMN Ventures were both shareholders in nVision and are named
 29 defendants in this litigation.

1 Greub were not to develop products on BioCardia's behalf. Ms. Sarna never disclosed this
 2 product, or any efforts to develop it, to BioCardia.

3 81. BioCardia Lifesciences is informed and believes and based on the foregoing
 4 alleges that Ms. Sarna took many steps to actively conceal her use of BioCardia resources to
 5 advance nVision, including deleting other emails sent to and from her BioCardia email account
 6 relating to nVision.

7 82. On Thursday, January 6, 2011, almost exactly a year *before* Ms. Sarna left
 8 BioCardia, she executed the "nVision Medical Corporation Common Stock Purchase
 9 Agreement," whereby Anula Jayasuriya purchased 510,640 shares at \$0.001 per share. Ms. Sarna
 10 formalized this agreement on Wednesday, January 12, 2011, when she executed an "Action by
 11 Sole Director of nVision Medical Corporation" selling the shares to Ms. Jayasuriya.

12 83. On Tuesday, January 25, 2011, a little less than a year before Ms. Sarna left
 13 BioCardia, Bedi Harmonhinder filed United States Provisional Patent Application No. 61/435,945
 14 ("the '945 provisional application") with the USPTO, naming Ms. Sarna as the sole inventor.
 15 The '945 provisional application is almost certainly the subject of Ms. Sarna's December 2010
 16 email to Anula Jayasuriya and Linda Greub and any subsequent communications, since both that
 17 email and the application discuss "a product which will diagnose fallopian tube occlusion in the
 18 office of the reproductive specialist." The '945 provisional application is a very close
 19 reproduction of the March 2000 lab notebook entry describing BioCardia's women's pelvic
 20 health inventions and trade secrets. Just like the March 2000 lab notebook, the '945 provisional
 21 application describes inserting a steerable catheter that has imaging, diagnostic, and treatment
 22 capabilities into a vagina. According to the '945 provisional application:

23 Another solution is to use a commercially available guidewire, but to have a catheter that
 24 contains both the illumination and imaging fibers within it in addition to the biopsy or
 25 injection needles.

26 The provisional application goes on to describe:

27 The invention relates to a novel technology and technique to diagnose, sample and
 28 treat occlusions of the fallopian tube and other fallopian tube diseases More
 specifically, the present invention relates to the fimbria end of the fallopian tube and

1 facilitates the in-office visual examination of the fallopian tube, further allows
 2 diagnostic procedures such as taking a biopsy, and injection of regional therapy,
 3 such as but not limited to a biotherapeutic.

4 For the **imaging capabilities**, the '945 provisional application discloses the same fiber optic and
 5 ultrasound techniques disclosed in the March 2000 lab notebook:

6 For the visualization portion of the catheter, several methods are presented including but
 7 not limited to using a fiber optics bundle, sound waves such as an ultrasound-related
 8 technique, and light scattering techniques, such as optical coherence tomography (OCT).

9 In addition to imaging capabilities, the '945 provisional application discusses providing
 10 **diagnostic** and **treatment capabilities** in the same catheter:

11 The working lumen of the device provides a passageway for the physician to have
 12 guidance through the fallopian tube via guidewire as well as provide access to the tube for
 13 biopsy or local therapeutic delivery.

14 Like the March 2000 lab notebook describing BioCardia's inventions and trade secrets in the
 15 women's pelvic health space, the '945 provisional application also describes accessing the
 16 fallopian tubes, with particular emphasis on the fimbria surrounding the ovaries. In fact, the title
 17 of the '945 provisional application is "A Transvaginal Device and Technique to Access the
 18 Fimbria of the Fallopian Tubes Via the Uterotubal Ostium in Order to Both Diagnose and Treat
 19 Occlusions and Disease." The application goes on to state that "the present invention relates to
 20 the fimbria-end of the fallopian tube."

21 84. Despite its clear relevance to BioCardia's business, and to the actual and
 22 demonstrably anticipated research and development that Dr. Altman wanted Ms. Sarna to perform
 23 for BioCardia, Ms. Sarna never informed BioCardia that she filed the '945 provisional
 24 application.

25 85. On August 20, 2011, some five months before leaving BioCardia, Ms. Sarna
 26 executed a "Written Consent of the Stockholders of nVision Medical Corporation," which
 27 identified Anula Jayasuriya as holding 510,640 shares of common shares and 316,056 seed
 28 preferred shares, and LMNVC, LLC (where Linda Greub was a principal) as holding 1,264,223
 seed preferred shares.

1 86. On November 13, 2011, some two months before Ms. Sarna left BioCardia, Kim
 2 Rubin filed United States Provisional Patent Application No. 61/559,120 (“the ’120 provisional
 3 application”) with the USPTO, naming Ms. Sarna as the sole inventor. Although not as similar to
 4 the March 2000 lab notebook as the ’945 provisional application, the ’120 provisional application
 5 nevertheless divulged BioCardia inventions and trade secrets. In particular, the ’120 provisional
 6 application disclosed a catheter that is inserted into a vagina and directed to the fallopian tube
 7 where it is used to take images. Just as with the March 2000 lab notebook, and the ’945
 8 provisional application, the ’120 provisional application’s “visualization portion of the catheter
 9 include but are not limited to using a fiber optics bundle” and “sound waves such as an
 10 ultrasound-related technique, such as Intravascular ultrasound (IVUS).” Also like the March
 11 2000 lab notebook and the ’945 provisional application, the ’120 provisional application
 12 “invention may be used to access the entire length of the fallopian tube.”

13 87. Despite its clear relevance to BioCardia’s business, and to the actual and
 14 demonstrably anticipated research and development that Dr. Altman wanted Ms. Sarna to perform
 15 for BioCardia, Ms. Sarna never informed BioCardia that she filed the ’120 provisional
 16 application.

17 88. During Ms. Sarna’s employment with BioCardia, she repeatedly sent confidential
 18 BioCardia documents to her personal email account, including a testing plan for the Helix
 19 steerable catheter sent just a few working days before she resigned from BioCardia. Below is a
 20 list of these confidential materials that BioCardia has been able to ascertain to date:

- 21 a. Morph Target Sheath Packaging Verification Protocol (April 29, 2009)
- 22 b. HIC (Helical Infusion Catheter)/UGC (Universal Guide Catheter)
 Packaging Procedure (April 29, 2009)
- 23 c. Pouch Seal Operational Qualification (April 29, 2009)
- 24 d. Morph AccessPro Risk Management Plan & Report (July 7, 2009)
- 25 e. Morph AccessPro Risk Management Plan & Report (longer version) (July
 7, 2009)
- 26 f. Morph Access Pro Risk Analysis Worksheet (July 7, 2009)

- 1 g. Morph Target Sheath Verification Matrix (July 7, 2009)
- 2 h. Morph Target Sheath Risk Management & Report (July 7, 2009)
- 3 i. BioCardia Engineering Change Order Form (November 20, 2009)
- 4 j. Morph 895 (AD) Catheter Label Verification Protocol (November 20,
- 5 2009)
- 6 k. Helical Infusion Catheter 953 Label Verification Protocol (November 20,
- 7 2009)
- 8 l. Dekra review of “technical file for the CE marking of the system
- 9 comprising of Helical Infusion Catheter and Universal Deflectable Guide
- 10 Catheter” (September 8, 2010)
- 11 m. Generic BioCardia quality assurance procedure for risk management
- 12 (October 24, 2010)
- 13 n. A presentation analyzing complaints against BioCardia’s Morph catheter
- 14 and explaining BioCardia’s response to these complaints (October 24,
- 15 2010)
- 16 o. “Complaint 0070 – Summary of Initial Observations of 6F Morph Device”
- 17 (October 24, 2010)
- 18 p. “02364-A (DH) Essential Requirements UGC [Universal Guide Catheter]”
- 19 (December 29, 2010)
- 20 q. Spreadsheet tracking failures and responses for BioCardia catheter
- 21 (February 14, 2011)
- 22 r. “02045-B (REG) Essential Requirements HIC [Helical Infusion Catheter]”
- 23 (March 11, 2011)
- 24 s. Generic BioCardia Labeling Verification Procedure (May 9, 2011)
- 25 t. “Long HIC [Helical Infusion Catheter] risk analysis” (September 8, 2011)
- 26 u. “Helical Infusion Catheter Risk Management Plan & Report” (September
- 27 8, 2011)
- 28 v. “Verification Test Plan for Helix Model 02772” (December 19, 2011)

1 89. On January 4, 2012, Ms. Sarna ended her employment with BioCardia and
 2 executed the BioCardia, Inc. Termination Certification, where she: (1) indicated that she had not
 3 retained any BioCardia materials; (2) certified that she had complied with BioCardia's invention
 4 assignment agreement, including "reporting of any inventions" she conceived; and (3) agreed to
 5 preserve all BioCardia trade secrets, confidential knowledge, proprietary information, products,
 6 processes, know-how, designs, and developmental or experimental work, among other things.

7 90. BioCardia Lifesciences is informed and believes and on that basis alleges that at
 8 the time of her departure, Ms. Sarna retained all the materials identified in paragraph 85 of this
 9 complaint and used some or all of those documents for the benefit of nVision.

10 91. At no time did Ms. Sarna inform BioCardia that she had filed several patent
 11 applications, and Ms. Sarna did not assign those applications to BioCardia but instead to nVision.

12 92. By the time of her departure, but unbeknownst to BioCardia, Ms. Sarna had
 13 misappropriated BioCardia trade secrets, confidential knowledge, proprietary information,
 14 products, processes, know-how, designs, and developmental or experimental work for the benefit
 15 of nVision and nVision's future assigns.

16 93. At no time prior to her departure from BioCardia did Ms. Sarna inform BioCardia
 17 that she had already incorporated a competing medical device company to develop steerable
 18 catheters similar to BioCardia's Helix and Morph catheters, or that she had engaged in significant
 19 rounds of funding for this competing business.

20 ***Ms. Sarna's Misappropriation of BioCardia Trade Secrets Upon Leaving BioCardia***

21 94. After Ms. Sarna left BioCardia, she continued to file patent applications covering
 22 BioCardia's confidential intellectual property, and developed catheter products similar to
 23 BioCardia's Morph and Helix catheters for gynecological applications.

24 95. After leaving BioCardia, Ms. Sarna filed several domestic and foreign patent
 25 applications that claimed priority to the '945 provisional application (collectively referred to as
 26 "the '945 Provisional Application Family") and which were based on the intellectual property
 27 described in Dr. Altman's March 2000 lab notebook and disclosed to Ms. Sarna by Dr. Altman
 28 during their meeting in or around May 2009, including but not limited to: PCT/US Patent

1 Application No. 12/022,619 (filed January 25, 2012), which was published as WO 2012/103,266
 2 (August 2, 2012); U.S. Patent Application No. 13/979,691 (filed January 25, 2012), which was
 3 published as 2013/0296686 (Nov. 7, 2013)); U.S. Patent No. 9,173,571; U.S. Patent Application
 4 No. 14/929,989 (filed November 2, 2015), which was published as 2016/0151011 (June 2,
 5 2016)); U.S. Patent No. 10,610,149; U.S. Patent Application No. 15/605,407 (filed May 27,
 6 2017), which was published as 2017/0258392 (Sept. 14, 2017)); U.S. Patent Application No.
 7 16/813,117 (filed March 9, 2020), which was published as 2020/0205722 (July 2, 2020); and
 8 several foreign counterparts. By claiming priority to the '945 provisional application, the
 9 members of the '945 Provisional Application Family all incorporate BioCardia inventions and
 10 trade secrets and all should have been assigned to BioCardia.

11 96. Ms. Sarna also filed additional patent applications that claimed priority to the '120
 12 provisional application (collectively referred to as "the '120 Provisional Application Family"),
 13 including but not limited to: PCT/US Patent Application No. 12/064,834 (filed November 13,
 14 2012), which was published as WO 2013/071293 (May 16, 2013); U.S. Patent Application No.
 15 14/357,875 (filed May 13, 2014), which was published as 2014/0323859 (Oct. 30, 2014)); and
 16 any foreign counterparts. By their reliance on the '120 provisional application, the members of
 17 the '120 Provisional Application Family all incorporate BioCardia inventions and trade secrets
 18 and all should have been assigned to BioCardia.

19 97. In or around 2013, Ms. Sarna began collaborating with Dr. Albert Chin to further
 20 refine the inventions and trade secrets she misappropriated from BioCardia. Through her
 21 collaboration with Dr. Chin, Ms. Sarna developed an evertng balloon catheter as the means of
 22 obtaining a biopsy in a fallopian tube. However, the collaboration by Ms. Sarna and Dr. Chin still
 23 relied on, and used, BioCardia's inventions and trade secrets in the form of a catheter-based
 24 approach to obtain a biological sample from a fallopian tube to determine ovarian state.

25 98. Ms. Sarna, Dr. Chin, and a few additional nVision employees filed several foreign
 26 and domestic patents on the evertng balloon refinement. The patent applications that claim
 27 priority to PCT/US Patent Application No. 14/014472 (collectively referred to as "the '472
 28 Application Family") include, but are not limited to: U.S. Patent Application No. 14/764,710

1 (filed July 30, 2015), which was published as 2015/0351729 (December 12, 2015)); U.S. Patent
2 No. 10,646,209; U.S. Patent Application No. 15/053,568 (filed February 25, 016), which was
3 published as 2016/0278747 (September 29, 2016); U.S. Patent No. 10,639,016; U.S. Patent
4 Application No. 16/834,507 (filed March 30, 2020), which was published as 2020/045983
5 (August 6, 2020); U.S. Patent Application No. 15/998,501 (filed August 16, 2018), which was
6 published as 2018/0353161 (December 13, 2018); U.S. Patent Application No. 15/998,507 (filed
7 August 16, 2018), which was published as 2019/0000429 (January 3, 2019); U.S. Patent
8 Application No. 16/834,480 (filed March 30, 2020), which was published as 2020/0245981
9 (August 6, 2020); PCT/US Patent Application No. 17/019700 (filed February 27, 2017), which
10 was published as WO 2017/147586 (August 31, 2017); PCT/US Patent Application No.
11 18/000229 (filed August 16, 2018), which was published as WO 2019/040094 (February 28,
12 2019); and several foreign counterparts.

13 99. In addition to the '945 Provisional Patent Family, the '120 Provisional Patent
14 Family, and the '472 Application Family described above, Ms. Sarna and nVision filed several
15 additional United States provisional patent applications, including, but not limited to, a “USPTO
16 provisional patent application filed on or around September 29, 2009” (BSC-BC00003116), U.S.
17 Provisional Patent Application No. 62/546,791 (filed August 17, 2017); U.S. Provisional Patent
18 Application No. 62/578,127 (filed October 27, 2017); U.S. Provisional Patent Application No.
19 62/608,027 (filed December 20, 2017); U.S. Provisional Patent Application No. 62/578,168 (filed
20 October 27, 2017); and U.S. Provisional Patent Application No. 62/599,555 (filed December 15,
21 2017 (collectively “the Additional Provisional Applications”). BioCardia Lifesciences is
22 informed and believes and on that basis alleges that the Additional Provisional Applications were
23 based on the confidential BioCardia intellectual property that Dr. Altman shared with Ms. Sarna
24 on or around May 2009.

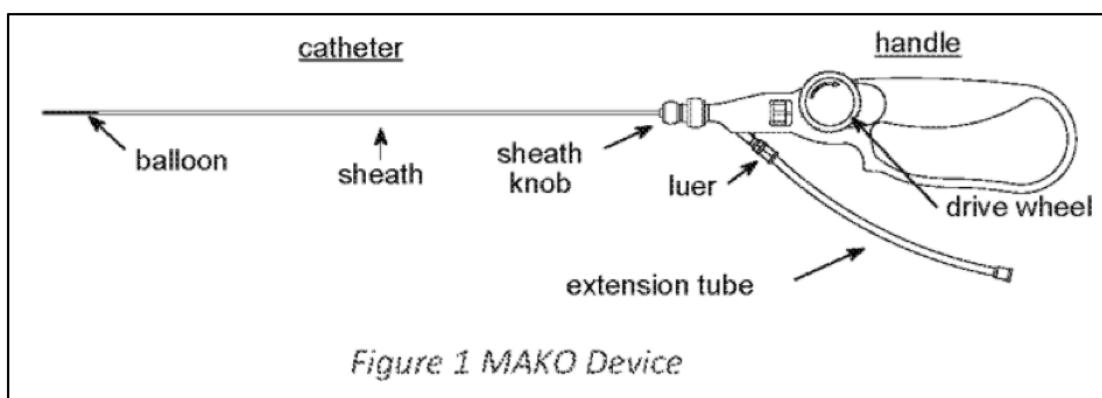
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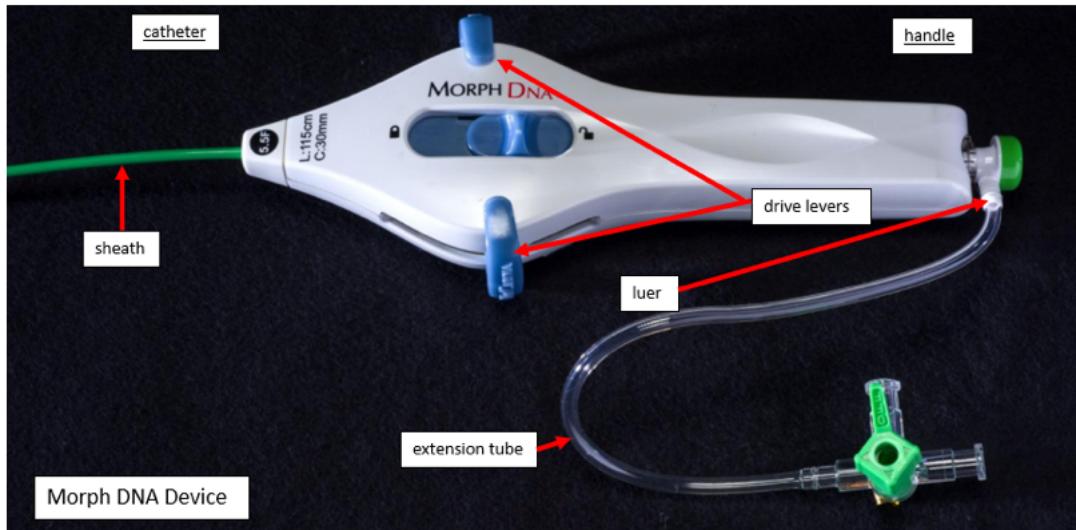
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1 100. In addition to her patenting efforts, Ms. Sarna also developed the Mako
 2 catheter. Aside from sizing differences, the Mako is very similar to BioCardia's Morph and Helix
 3 catheters, both of which Ms. Sarna worked on while at BioCardia. For example, in nVision
 4 Medical Corporation's Instructions for Use depict the Mako 7 catheter as "comprised of a
 5 catheter and a handle." BSC-BC00004101. The handle includes a "luer," which attaches to an
 6 "extension tube" that provides liquid to the Mako device. The handle also includes a "drive
 7 wheel," which, when turned by the operator, pushes the liquid provided by the extension tube to
 8 the distal end of the catheter where it expands a balloon inside the catheter tip.



16 BioCardia's Morph catheter, for example, presents a similar visual appearance to, and nearly the
 17 same components as, the Mako device. Like the Mako, the Morph is comprised of a catheter and
 18 a handle. The Morph handle includes a "luer," which attaches to an "extension tube" that
 19 provides liquid, which is delivered to the heart for treatment. The Morph handle includes "drive
 20 levers," which, when pulled by the operator, push the liquid treatment provided by the extension
 21 tube to the distal end of the catheter where it is delivered to the heart.

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101. In addition to her patenting efforts, and the development of the Mako catheter system, Ms. Sarna also misappropriated BioCardia intellectual property from the March 2000 lab notebook entry by disclosing this confidential information to various medical professionals as part of the development process. BioCardia Lifesciences is informed and believes and on that basis alleges that Ms. Sarna divulged confidential BioCardia intellectual property to at least the following individuals to obtain funding for nVision Medical Corporation, and as part of the Mako development and clinical trial process: Anula Jayasuriya; Linda Greub; Jesus Magana; Wendy Heigel; Andrew Cleeland; Dr. Tom Shebab; Arboretum Ventures IV, LP; Astia Angel nVision LLC; Catalyst Health Ventures (PF) L.P.; Catalyst Health Ventures Follow-On Fund, L.P.; Catalyst Health Ventures III, L.P.; Catalyst Health Ventures, LP; CHV Investments, LLC; CHV Partners Fund III, L.P.; CHV-E Partners III, L.P.; Draper Associates Investments, LLC; Draper Associates Riskmaster Fund II, LLC; Draper Associates Riskmasters Fund III, LLC; Excelestar Ventures I, LLC; EXXclaim Capital Partners I, LP; Fogarty Institute for Innovation; Golden Seeds nVision Medical, LLC; Life Sciences Angel Investors VIII, LLC; LMNVC, LLC; Seraph nVision, LLC; Dr. Shamila Pramanik; Dr. Jose Garza Leal; Dr. Sarah H. Kim; Dr. Ronny Drapkin; Dr. Mark Morgan; Dr. Barry Berger; Dr. Paul Billings; Dr. Amy Garcia; Dr. Stephen

1 Grochmal; Dr. Allison Kurian; Dr. Charles Landen; Dr. David Miller; Dr. Bethan Powell; Dr.
 2 Eric Yang; Dr. Elena Gates; Dr. Hector Chapa; Dr. Lynn Marie Westphal; Dr. William Keye; Dr.
 3 Viviane Connor; Dr. Jim Tsaltas; Dr. Douglas Hart; Dr. Andrew Brill; Dr. David Miller; Dr.
 4 Jonathan Berek; Dr. Frederick St. Goar; and various staff members of the individuals and entities.

5 ***BioCardia's First Awareness of Ms. Sarna's Breach of Contract and Misappropriation of
 6 Trade Secrets***

7 102. The first time that the BioCardia Entities became aware of Ms. Sarna's breach of
 8 her employment contract, and misappropriation of BioCardia's confidential information, was in
 9 January 2019, after Boston Scientific advised Dr. Altman that it no longer wanted to pursue a
 10 business relationship with BioCardia that previously had been under discussion. Surprised by this
 11 development and having learned that Boston Scientific had acquired the company Ms. Sarna had
 12 founded, Dr. Altman searched the USPTO website to see what Ms. Sarna was working on. It was
 13 only after conducting these searches, that Dr. Altman and BioCardia learned that Ms. Sarna had
 14 filed the '945 provisional application and the '120 provisional application during her time at
 15 BioCardia, and that these applications, and several patents that claimed priority to these
 16 applications, were based on the March 2000 lab notebook entry that Dr. Altman described to Ms.
 17 Sarna in or around May 2009. Dr. Altman describes the experience of seeing the first patent in
 18 2019 as feeling his "blood run cold" as soon as he saw the area she was working in and how
 19 closely it was related to the project he had detailed to her.

20 103. Prior to January 2019, the BioCardia Entities were not aware that Ms. Sarna had
 21 founded a competing medical device company that made catheters like BioCardia's Morph and
 22 Helix catheters and was not aware that Ms. Sarna had misappropriated BioCardia's intellectual
 23 property. Nothing about Ms. Sarna's actions during her employment at BioCardia, or her
 24 communications with BioCardia employees after she left BioCardia, would have put BioCardia
 25 on notice that she had founded a competing company or misappropriated BioCardia's trade
 26 secrets.

27 104. For example, Ms. Sarna claims that she openly shared her desire to start her own
 28 company focused on women's health with her colleagues at BioCardia. Sharing an interest in

1 starting a medical device company with co-workers is not the same as providing notice that this
2 company will compete with your co-workers or that you plan to misappropriate company
3 confidential information. While Ms. Sarna may or may not have shared the desire to start a new
4 company, she certainly did not tell BioCardia that this company would compete with BioCardia,
5 that it would misappropriate BioCardia's trade secrets or that it was already founded in 2009
6 while she was a BioCardia employee.

7 105. Ms. Sarna also claimed that Dr. Altman gave her permission to pursue her own
8 women's health projects on her own time and using her own resources, and that this somehow
9 condones her misappropriation of BioCardia technology. This plainly is not true. Dr. Altman
10 never gave Ms. Sarna a blanket permission to start a competing company or to pursue any
11 independent research on women's health. Almost from the beginning of Ms. Sarna's employment
12 at BioCardia, co-workers were concerned about her absences, her lack of focus at work, and her
13 low productivity. The idea that Dr. Altman would have encouraged her to pursue outside
14 research, which only would have exacerbated her poor performance at work, is illogical.

15 106. Ms. Sarna never informed BioCardia, either orally or in writing, that she had filed
16 several provisional patent applications during her BioCardia employment, as required by her
17 employment contract. In fact, when Ms. Sarna executed her "Termination Certification" on her
18 last day at BioCardia, she affirmatively represented that she had complied with BioCardia's
19 Employment Confidential Information and Invention Assignment Agreement and did not have
20 any patent applications to report.

21 107. Ms. Sarna's communications with BioCardia employees also did not give
22 BioCardia notice that she had formed a competing company or that she had misappropriated
23 BioCardia intellectual property. For example, pretty much the only communication Ms. Sarna
24 had with Dr. Altman after she left BioCardia was the email below and a few additional follow-up
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1 emails. BC-BSC_0000016. Needless to say, this did not put Dr. Altman on notice that Ms. Sarna
 2 had formed a competing business, breached the Sarna Agreement or that she had misappropriated
 3 BioCardia intellectual property.

4 **From:** [Surbhi Sarna](#)
 5 **To:** [Peter Altman](#)
 6 **Subject:** catching up
Date: Wednesday, January 25, 2012 10:55:55 AM

7

8 Hi Peter,

9 I have some news -- I'm officially an entrepreneur! As successful and
 knowledgeable as you are, I would love to get together sometime soon
 and learn from you. But, I also know how incredibly busy you are - what
 is your schedule like in the coming weeks?

10

11 Looking forward to it,
 Surbhi
 408.655.3577

12 108. Ms. Sarna has asserted that in June 2013, BioCardia's then COO, Mr. MacKenzie,
 13 heard Ms. Sarna speak at a conference about nVision, the ovarian cancer detection device she was
 14 developing, the design of the devices she was developing, and the patents she had filed for
 15 nVision. This is incorrect. While Mr. MacKenzie did bump into Ms. Sarna at a conference in
 16 2013, he did not hear her speak, and did not see Ms. Sarna's presentation. Mr. MacKenzie will
 17 testify to the effect that at the 2013 conference he did not learn anything about what nVision was
 18 doing, anything about nVision's detection device or its design, or anything about the patents Ms.
 19 Sarna had filed for nVision.

20 109. Ms. Sarna also cites Mr. MacKenzie's email following up from the 2013
 21 conference as somehow supporting her claim that BioCardia consented to her misappropriation.
 22 Below is what Mr. Mackenzie emailed Ms. Sarna after bumping into her at the 2013 conference:

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 Gmail Surbhi Sarna <surbhiss@gmail.com>

re: WSGR conf & happy Surbhi
8 messages

Andy Mackenzie <andy@biocardia.com>
To: Surbhi Sarna <surbhiss@gmail.com> Fri, Jun 21, 2013 at 10:15 AM

Hey Surbhi-

It was really nice to see you this week at the conference. It makes me happy to see how successful you have been at pursuing the birth of your company and how that has changed how you look standing and talking to others- you look relaxed and satisfied, and that is wonderful to see.

Please feel free to call on me if I can be helpful or if you are in the neighborhood and want to meet up for coffee or lunch.

All the best for your continued success! See you soon.

Andy

Dkt. 1 at Ex. C. All this email states is that Mr. MacKenzie ran into Ms. Sarna at the 2013 conference (“It was really nice to see you this week at the conference.”), which is consistent with what he will testify to if asked about this interaction. What is missing from this email, or any other emails on this topic, is anything to corroborate Ms. Sarna’s claim that Mr. MacKenzie saw her 2013 presentation or learned about nVision’s products or intellectual property, which he recalls he did not.

110. The BioCardia Entities subsequently learned that, in addition to the intellectual property that nVision acquired covering the intellectual property contained in the March 2000 lab notebook entry, it also had developed a product called the Mako that incorporated much of the same intellectual property described in the lab notebook.

111. After Boston Scientific acquired nVision, it engaged in efforts to rebrand the Mako with its own product name, called Cytuity. BioCardia Lifesciences is informed and believes and on that basis alleges that Cytuity functions the same as Mako, and, therefore, also implements BioCardia’s intellectual property disclosed in the March 2000 lab notebook entry.

112. BioCardia Lifesciences is informed and believes and on that basis alleges that after

1 or simultaneously with its acquisition of nVision, Boston Scientific transferred all of nVision's
 2 patents and patent applications, and perhaps its other intellectual property as well, to Boston
 3 Scientific Scimed.

4 ***nVision Is Chargeable with Sarna's Wrongful Acts***

5 113. nVision was directly and primarily liable for its own misappropriations of
 6 BioCardia Lifesciences' trade secrets and secondarily liable for Ms. Sarna's misappropriation of
 7 BioCardia Lifesciences' trade secrets under the doctrine of respondeat superior because Ms.
 8 Sarna, as the president and founder of nVision, was acting within the course and scope of her
 9 employment in committing the acts of misappropriation as herein alleged. *See, e.g., In re Energy*
 10 *Securities Litigation*, No. 15-cv-00265-EMC, 2016 WL 324150, *25 (N.D. Cal. Jan 27, 2016).

11 **COUNT I**
 12 **(Correction of Inventorship under 35 U.S.C. § 256)**
(Against Defendants nVision and Boston Scimed)

13 114. BioCardia realleges paragraphs 1-113, inclusive.

14 115. BioCardia requests correction of inventorship of U.S. Patent Nos. 9, 173,571,
 15 10,610,149, 10,639,016 and 10,646,209.

16 116. “[A] joint invention is simply the product of a collaboration between two or more
 17 persons working together to solve the problem addressed.’....‘People may be joint inventors even
 18 though they do not physically work on the invention together or at the same time, and even though
 19 each does not make the same type or amount of contribution.’... To be a joint inventor, one must
 20 ‘(1) contribute in some significant manner to the conception or reduction to practice of the
 21 invention, (2) make a contribution to the claimed invention that is not insignificant in quality, when
 22 that contribution is measured against the dimension of the full invention, and (3) do more than
 23 merely explain to the real inventors well-known concepts and/or the current state of the art.’”
 24 *Dana-Farber Cancer Center Institute, Inc. v. Ono Pharmaceutical, Ltd.*, 964 F.3d 1365, 1371 (Fed.
 25 Cir. July 14, 2020). Here the requirements for Drs. Stertzner and Altman to be joint inventors are
 26 easily met as alleged below.

27 117. The March 23, 2000 entry that Dr. Altman recorded in his lab notebook disclosed
 28 and described several solutions to problems in the field diagnosing, testing, and treating ovarian

1 cancer.

2 118. The inventions disclosed in the lab notebook are novel and minimally invasive
 3 methods of determining ovarian state by adding imaging, testing, and treatment functionality to the
 4 end of a steerable catheter system, and guiding that catheter system through a uterus to the fallopian
 5 tube, where imaging, testing, and treatment can be conducted, including several different imaging,
 6 testing, and treatment options that can be available at the distal end of the catheter; how this catheter
 7 system could be applied in different ways depending on the ovarian condition that is to be
 8 addressed; use of the catheter system in different locations in a woman's pelvis; and possible use
 9 of the catheter to facilitate pregnancies.

10 119. Drs. Altman and Stertzner worked collaboratively to develop the inventions disclosed
 11 in the March 23, 2000 lab notebook entry. In March 2000, Dr. Stertzner called Dr. Altman to discuss
 12 what he considered to be a good business opportunity for BioCardia. According to Dr. Stertzner, it
 13 would be possible to adapt the Helix and Morph catheters that BioCardia made for cardiovascular
 14 applications to be used in fallopian tubes to improve the ability to diagnose pre-cancerous and
 15 cancerous cysts in a less invasive way. Dr. Stertzner believed that once BioCardia's catheters were
 16 properly sized, their maneuverability made them ideal for the toruosity of the fallopian tubes.

17 120. Dr. Stertzner's contributions to the inventions in the March 2000 lab notebook entry
 18 were: (1) the general idea of adapting BioCardia's catheters for gynecological applications; and
 19 (2) relevant physiological information (i.e., information about body parts with which the catheter
 20 system would interact).

21 121. Dr. Altman built on Dr. Stertzner's ideas by adding his conception of a catheter
 22 system that could address this problem. Dr. Altman's contribution to the March 2000 lab notebook
 23 entry's inventions related to the devices that could address the need that Dr. Stertzner identified.

24 122. After this initial phone call, Drs. Stertzner and Altman continued to collaborate on
 25 the inventions. In the days following the call, Dr. Altman recorded Dr. Stertzner's ideas in his lab
 26 notebook and added descriptions and details about the devices that he contributed to the inventions.
 27 Shortly after Dr. Altman had completed the disclosure in the March 2000 lab notebook entry, he
 28 reached out to Dr. Stertzner to discuss what he had contributed and further explore the inventions.

1 This set off a series of communications over the following months and years between the joint
 2 inventors on this topic. During these communications, Dr. Stertzner suggested that Dr. Altman
 3 follow up with various practitioners to discuss the possibility of developing the inventions,
 4 including Dr. Camran Nezhat. Dr. Altman then reached out to Dr. Nezhat and began a dialogue
 5 about the development and use of the catheter technologies for gynecological applications.

6 123. BioCardia Lifesciences has standing to bring this correction of inventorship claim
 7 because both Dr. Stertzner and Dr. Altman assigned their rights to the inventions disclosed in the
 8 March 2000 lab notebook entry to BioCardia through various agreements.

9 124. For example, under Section 7.1 of this agreement, Dr. Stertzner agreed that to
 10 “promptly disclose all Inventions, as defined in Section 1.3 above, to [Hippocratic Engineering]”
 11 which “shall be the owner of all Inventions, including all patent rights, trade secrets and other
 12 intellectual property rights therein.” Section 1.3 of the agreement defined “Inventions” as “all
 13 discoveries, inventions, improvements, developments, products, processes, procedures, techniques,
 14 formulae, computer programs, drawings, designs, notes, documents, information and materials first
 15 made, conceived, developed or reduced to practice in, the course of Advisor’s performance of
 16 Advisory Services for [Hippocratic Engineering] in the Field of Advising.” Section 1.1 defined
 17 “Advisory Services” as “attending meetings of the Scientific Advisory Board, reviewing research
 18 and development projects, reviewing and criticizing technical and/or business opportunities and
 19 devising clinical trial strategies and protocols, and other services rendered to [Hippocratic
 20 Engineering] in the Field of Advising.” Section 5.3 of the agreement set out how either party may
 21 terminate the agreement. Since the April 1999 signing date, neither Dr. Stertzner nor BioCardia (in
 22 its present or previous forms) ever terminated Dr. Stertzner’s “Agreement for Scientific Advisor
 23 Services.” As a result, Dr. Stertzner assigned his rights to the inventions disclosed in the March
 24 2000 lab notebook entry.

25 125. Dr. Altman assigned his rights to the inventions disclosed in the March 2000 lab
 26 notebook entry through his July 1999 employment agreement with BioCardia, which tracks the
 27 language of Ms. Sarna’s BioCardia employment agreement.

28 126. Both Dr. Stertzner and Dr. Altman are willing to sign declarations clarifying their

1 assignments to BioCardia on this subject matter if the Court deems it necessary.

2 127. Under Section 3(b) of that agreement, Dr. Altman agreed to “promptly make full
 3 written disclosure to [BioCardia], will hold in trust for the sole right and benefit of [BioCardia],
 4 and hereby assign to [BioCardia], or its designee, all my right, title, and interest in and to any and
 5 all inventions, original works of authorship, developments, concepts, improvements or trade
 6 secrets.” Dr. Altman’s employment with BioCardia has been continuous and uninterrupted from
 7 July 1999 to the present. Thus, Dr. Altman assigned his rights to the inventions disclosed in the
 8 March 2000 lab notebook entry to BioCardia.

9 128. Shortly after Ms. Sarna began her full-time employment with BioCardia, Dr. Altman
 10 sought to enable her entrepreneurial efforts on behalf of BioCardia and get her to work on a
 11 skunkworks side project to further develop the inventions described in the March 2000 lab notebook
 12 entry. During a one-on-one meeting with Ms. Sarna in or around May 2009, Dr. Altman described
 13 and explained the new state of the art possibilities with gene expression profiling and the contents
 14 of the March 2000 lab notebook entry. For well over an hour, Dr. Altman explained in great detail
 15 the individual aspects of each disclosed invention, taking time to discuss the underlying technology
 16 and the significance of these developments. Dr. Altman took this time and provided this detail
 17 because he hoped that Ms. Sarna would appreciate the importance of these inventions and play an
 18 important role in driving further development, collaborating with Dr. Altman to create a successful
 19 business within BioCardia that focused on applications of these inventions.

20 129. BioCardia Lifesciences is informed and believes and on that basis alleges that Dr.
 21 Altman’s May 2009 disclosure and March 2000 lab notebook entry was the only possible source
 22 of the inventive concepts that Ms. Sarna patented (either jointly or individually) on behalf of
 23 nVision. The reason for this is because no one of skill in the art beyond Dr. Altman and Dr. Stertzner,
 24 both in March 2000 and when Dr. Altman disclosed the lab notebook inventions to Ms. Sarna, even
 25 realized that these inventions were technologically feasible.

26 130. Gene expression profiling maximized the potential for practitioners to get any useful
 27 information from the catheter approach of obtaining a biologic sample from the fallopian tube
 28 envisioned by Drs. Stertzner and Altman. This is because the sample can be amplified and it contains

1 all of the information on the status of the cells. In 2000, gene expression profiling did not exist –
 2 and BioCardia was one of the leaders in its development. In 2008, the first gene expression assay
 3 ever was approved by the FDA, the ALLOMAP assay which was developed initially under the
 4 leadership of Dr. Altman who was CEO for both BioCardia and CareDX even after the companies
 5 split in 2002. Only an extremely small set of people in the entire world realized that something
 6 like ovarian cancer could be tested from a small sample of cells, and how to develop these assays
 7 to guide life and death clinical decisions. With the exception of Dr. Altman, none of these people
 8 had the necessary experience developing catheter systems to understand the usefulness of
 9 combining the two technologies.

10 131. In fact, at the time of Dr. Altman’s disclosure to Ms. Sarna, BioCardia Lifesciences
 11 is informed and believes and on that basis alleges that only three companies were involved in gene
 12 expression profiling as a diagnostic product. Dr. Altman was a member of this elite group of
 13 technologists because his team at BioCardia founded CareDx, one of the three gene expression
 14 profiling startups that still existed (and does as a public company to this day) at the time of his
 15 disclosure to Ms. Sarna. But even within this small group of people, Drs. Altman and Stertzler,
 16 through their work at BioCardia, were the only ones who had sufficient familiarity with catheter
 17 devices to conceive of the inventions disclosed in the March 2000 lab notebook entry. Nobody in
 18 the world of gene expression profiling for early cancer diagnosis, other than Altman and Stertzler,
 19 had any idea that samples from the fallopian tubes could be obtained which might correlate with
 20 ovarian state.

21 132. In addition, both in March 2000 and when Dr. Altman disclosed the lab notebook to
 22 Ms. Sarna and the potential of gene expression profiling to Ms. Sarna, BioCardia Lifesciences is
 23 informed and believes and on that basis alleges that those of skill in the art were not looking at
 24 fallopian tubes as a location that could yield useful information about ovarian state. The prevailing
 25 thought at the time held that determining whether a patient had ovarian cancer meant accessing and
 26 testing the ovaries themselves. This was true even as first scientific information became available
 27 in 2009 that many cases of ovarian cancer originated in the fallopian tube.

28 133. In the following paragraphs, BioCardia Lifesciences identifies the inventive

1 contributions of Drs. Altman and Stertzner.

2 134. **U.S. Patent No. 9,173,571 (member of the '945 Provisional Family):** Drs.
 3 Altman and Stertzner are, at the very least, co-inventors of U.S. Patent No. 9,173,571 ("the '571
 4 patent"). For example, Drs. Altman and Stertzner conceived, or at least contributed to the
 5 conception, of the highlighted portions of claim 1:

6 1. A device for maintaining a narrow body lumen, comprising: a hydraulic
 7 propulsion mechanism and at least one of an imaging portion or a therapeutic
 8 portion, said hydraulic propulsion mechanism configured for propelling said
 9 imaging portion or said therapeutic portion relative to said hydraulic propulsion
 10 mechanism and through the narrow body lumen, said hydraulic propulsion
 11 mechanism including an elongate shaft, wherein the narrow body lumen is distal of
 12 a distal end of said elongated shaft; wherein said imaging portion or said therapeutic
 13 portion, when propelled by said hydraulic propulsion mechanism, is driven distally
 14 from said distal end of said elongated shaft and is distally spaced therefrom; and
 15 a retrieval mechanism for retrieving said imaging portion or said therapeutic
 16 portion from the narrow body lumen.

17 Drs. Altman and Stertzner both conceived of the "device for maintaining a narrow body lumen"
 18 limitation as shown, for example, in the figures and disclosure of the March 2000 lab notebook
 19 entry that show the catheter system they invented inserted into the fallopian tubes and the spaces
 20 surrounding the inserted catheters. Drs. Altman and Stertzner both conceived of the "at least one of
 21 an imaging or a therapeutic portion" and the "wherein said imaging portion or said therapeutic
 22 portion" limitations by, for example, Dr. Stertzner's observation in the March 2000 lab notebook
 23 entry that modified BioCardia catheters could image and treat ovarian cancer and Dr. Altman's
 24 identification in the same lab notebook entry of different imaging, diagnostic, and treatment
 25 capabilities. Dr. Altman conceived of the "elongate shaft" and "is driven distally from said distal
 26 end of said elongated shaft and is distally spaced therefrom" limitations by, for example, his
 27 conception of a catheter system in the March 2000 lab notebook entry that involved a guide and a
 catheter that extended from the guide. Through the March 2000 lab notebook entry, Drs. Altman
 and Stertzner contributed to claim 1 of the '571 patent the inventive concepts of inserting a catheter
 adapted to provide imaging and therapeutic capabilities at its distal end into the fallopian tubes by
 extending an elongated shaft to image gynecological structures and provide required therapy.

28 135. **U.S. Patent No. 10,610,149 (member of the '945 Provisional Patent Family):**

1 Drs. Altman and Stertzler are, at the very least, co-inventors of U.S. Patent No. 10,610,149 (“the
 2 ’149 patent”). For example, Drs. Altman and Stertzler conceived, or at least contributed to the
 3 conception, of the highlighted portions of claim 1:

4 1. **A Fallopian tube diagnostic device**, comprising: a **catheter** including a **sensing**
 5 **portion** and an **inflatable portion**, wherein **one or more objects** are **detectable** in the
 6 **Fallopian tube** via the **sensing portion**; and **a solution lumen** for providing a
 7 **solution**, the **solution** being **disposable** in the **Fallopian tube** for **detecting** the **one**
 8 **or more objects**; wherein the **inflatable portion** is adjacent and proximal to said
 9 **sensing portion** and is **configured** to **inflate** in the **Fallopian tube** to create a space
 10 **around** said **sensing portion** and to create a seal such that the fallopian tube can be
 11 **filled** with the **solution**.

12 Drs. Altman and Stertzler both conceived of the “fallopian diagnostic device” limitation as shown,
 13 for example, in the figures and disclosure of the March 2000 lab notebook entry explaining the
 14 catheter system they invented. Drs. Altman and Stertzler both conceived of the “catheter,” “sensing
 15 portion,” and “one or more objects are detectable in the Fallopian tube via the sensing portion”
 16 limitations, by, for example, Dr. Stertzler’s contribution to the March 2000 lab notebook entry’s
 17 disclosure that the inventive catheter could detect and diagnose pre-cancerous and cancerous
 18 structures in the fallopian tubes, and by, for example, Dr. Altman’s conception of “optional imaging
 19 capabilities” in that same lab notebook entry that could be used with the inventive catheter,
 20 including, but not limited to, fiber optics, ultrasound, and cameras. Dr. Altman conceived of the
 21 “a solution lumen for providing a solution, the solution being disposable in the Fallopian tube”
 22 through the March 2000 lab notebook entry describing catheters with lumens and the description
 23 of treatment lumen in the catheter to deliver, for example, alcohol or cytotoxic agents to the distal
 24 end of the catheter. Through the March 2000 lab notebook entry, Drs. Altman and Stertzler
 25 contributed to claim 1 of the ’149 patent the inventive concepts of inserting a catheter adapted to
 26 provide imaging capabilities at its distal end into the fallopian tubes, and using this imaging
 27 capability to detect one or more objects in the fallopian tubes.

28 136. **U.S. Patent No. 10, 639,016 (member of the ’472 Application Patent Family):**
 29 Drs. Altman and Stertzler are, at the very least, co-inventors of U.S. Patent No. 10,639,016 (“the
 30 ’016 patent”). For example, Drs. Altman and Stertzler conceived, or at least contributed to the

1 conception, of the highlighted portions of claim 1:

2 1. A process of collecting cells from a tissue surface of a Fallopian tube in a subject
 3 comprising: deploying a distal end of a catheter at a proximal end of the tissue
 4 surface of the Fallopian tube; everting an inelastic balloon extendible from the
 5 distal end of the catheter to contact the tissue surface of the Fallopian tube wherein
 6 in response to everting, over-expansion of the Fallopian tube by the inelastic
 7 balloon is prevented; partially deflating said balloon to form wrinkles on an outer
 8 surface of said balloon and capturing the cells on said wrinkles; and withdrawing
 9 said balloon from the subject to collect the cells from the Fallopian tube.

10 When Dr. Altman described the contents of the March 2000 lab notebook entry to Ms. Sarna, he
 11 conveyed the conception of these highlighted limitations to Ms. Sarna, who then provided these
 12 concepts as part of her collaboration with Dr. Chin and other nVision employees and consultants
 13 that resulted in U.S. Patent No. 10,639,016. Drs. Altman and Stertzler both conceived of the
 14 “process of collecting cells from a tissue surface of a Fallopian tube in a subject” limitation as
 15 shown, for example, in the figures and disclosure of the March 2000 lab notebook entry that show
 16 a catheter system they invented diagnosing ovarian state in the fallopian tubes. Both Drs. Altman
 17 and Stertzler conceived of the “deploying a distal end of a catheter at a proximal end of the tissue
 18 surface of the Fallopian tube” and “extendible from the distal end of the catheter to contact the
 19 tissue surface of the Fallopian tube” limitations by, for example, Dr. Stertzler’s disclosure in the
 20 March 2000 lab notebook entry of navigating a catheter through the fallopian tubes to collect tissue
 21 samples to diagnose ovarian state, and Dr. Altman’s disclosure in the same lab notebook entry of a
 22 catheter that includes implements at its distal end that can perform fluid or material core biopsies
 23 in the fallopian tubes. Both Drs. Altman and Stertzler conceived of the “capturing the cells” and
 24 “collect the cells from the Fallopian tube” limitations by, for example, Dr. Stertzler’s disclosure in
 25 the March 2000 lab notebook entry of a catheter system that could diagnose ovarian state by testing
 26 tissue samples from the fallopian tubes, and Dr. Altman’s disclosure in the same lab notebook entry
 27 of a catheter that has, on its distal end, implements capable of collecting, for example, fluid or
 28 material core cell samples from the fallopian tube. Through the March 2000 lab notebook entry,
 Drs. Altman and Stertzler contributed to claim 1 of the ’016 patent the inventive concepts of a
 process of collecting cells from a tissue surface of a Fallopian tube in a subject by deploying the

1 distal end of a catheter to collect cells from the fallopian tube.

2 137. **U.S. Patent No. 10,646,209 (member of the '472 Application Patent Family):**

3 Drs. Altman and Stertzler are, at the very least, co-inventors of U.S. Patent No. 10,646,209 ("the
4 '209 patent"). For example, Drs. Altman and Stertzler conceived, or at least contributed to the
5 conception, of the highlighted portions of claim 1:

6 1. A **catheter** comprising: **a tube having a distal end**; a balloon having a distal end
7 secured to the distal end of the tube at a proximal end of the balloon, the balloon
8 having a length, a majority of the length of the balloon being inelastic, said balloon
9 being adapted to evert from an inverted position to a longitudinally extended
10 everted position in a Fallopian tube so as prevent over-expansion of the Fallopian
11 tube during eversion; and **an extending portion comprising a filament disposed at**
12 **the distal end** of said balloon moveable between the inverted position and the
13 longitudinally extended everted position with eversion of said balloon; wherein
14 each of said balloon and said filament has **an outer surface configured to remove**
15 **and retain cells from a wall of the Fallopian tube**; wherein the filament is configured
16 to curl, spread, fan, ball-up, or expand-out, or combinations thereof, in response to
17 the balloon moving between the inverted position and the everted position.

18 When Dr. Altman described the contents of the March 2000 lab notebook entry to Ms. Sarna, he
19 conveyed the conception of these highlighted limitations to Ms. Sarna, who then provided these
20 concepts as part of her collaboration with Dr. Chin and other nVision employees and consultants
21 that resulted in U.S. Patent No. 10,646,209. Drs. Altman and Stertzler both conceived of the
22 "catheter" and "tube having a distal end" limitations by, for example, Dr. Stertzler's disclosure in
23 the March 2000 lab notebook entry of the distal end of a catheter tube navigating the fallopian tubes
24 to collect cells to determine ovarian state, and Dr. Altman's disclosure in the same lab notebook
25 entry of a catheter system having a tube with a distal end that is guided to the fallopian tubes. Drs.
26 Altman and Stertzler also conceived of the "outer surface configured to remove and retain cells from
27 a wall of the Fallopian tube" limitation by, for example, Dr. Stertzler's disclosure in the March 2000
28 lab notebook entry of using a catheter system to navigate the fallopian tubes to collect tissue
samples to determine ovarian state, and Dr. Altman's disclosure of implements at the distal end of
the catheter that are capable of collecting fluid and material core samples from the fallopian tubes.
Through the March 2000 lab notebook entry, Drs. Altman and Stertzler contributed to claim 1 of

1 the '209 patent the inventive concepts of the distal end of a catheter tube being equipped with
2 implements capable of collecting cells from the wall of the fallopian tube so that tests may be
3 performed to determine ovarian state.

4 138. As alleged herein, BioCardia Lifesciences did not discover, and could not have
5 discovered, its correction of inventorship claims through the exercise of reasonable diligence, until
6 December 2018 or January 2019. Ms. Sarna fraudulently concealed her wrongful acts, postponing
7 the accrual of BioCardia Lifesciences' claims and therefore the beginning of the running of the
8 statute of limitations until BioCardia Lifesciences actually discovered the fraudulent acts, because
9 among other things as herein alleged, Ms. Sarna (a) concealed her wrongdoing from the BioCardia
10 Entities which (b) she was contractually obligated to disclose to BioCardia (c) which concealment
11 she did with the intent to defraud BioCardia (d) of which fraudulent acts BioCardia Lifesciences
12 was unaware until January 2019 and upon which BioCardia Lifesciences would have acted earlier
13 had it been earlier aware of them, causing BioCardia Lifesciences to sustain the damage alleged
14 herein.

139. Drs. Altman and Stertzler are omitted inventors on U.S. Patent Nos. 9, 173,571, 10,610,149, 10,639,016 and 10,646,209. Moreover, BioCardia is a proper assignee of Drs. Altman and Stertzler's ownership interest in U.S. Patent Nos. 9, 173,571, 10,610,149, 10,639,016 and 10,646,209..

19 140. BioCardia requests correction of inventorship of U.S. Patent Nos. 9, 173,571,
20 10,610,149, 10,639,016 and 10,646,209 to name Dr. Peter Altman and Dr. Simon Stertzner as co-
21 inventors.

COUNT II
**(Breach of Contract Against Ms. Sarna and Disgorgement of Unjust Enrichment Against
All Defendants)**

24 141. BioCardia Lifesciences realleges paragraphs 1-140, inclusive.

25 142. The Sarna Agreement is a valid and enforceable contract with BioCardia.

26 143. BioCardia has duly performed all conditions, covenants, and promises required on
27 its part to be performed pursuant to the Sarna Agreement.

1 144. Ms. Sarna breached her contractual obligations to BioCardia under the Sarna
2 Agreement by, *inter alia*:

3 a. Failing to preserve the confidentiality of BioCardia trade secrets and only
4 using BioCardia confidential information for the benefit of BioCardia, as required by
5 Section 2(a) of the Sarna Agreement;

6 b. Failing to disclose to and assign to BioCardia each of the patents and patent
7 applications in the '945 Provisional Patent Family, '120 Provisional Patent Family, '472
8 Application Family, and the Additional Provisional Applications, as required by Section
9 3(b) of the Sarna Agreement;

10 c. Failing to keep and maintain adequate and current written records of all
11 inventions she made during her term of her employment with BioCardia, as required by 3(d)
12 of the Sarna Agreement;

13 d. Failing to assist BioCardia in "in every proper way to secure" its rights in
14 the inventions Ms. Sarna made during her employment at BioCardia, as required by Section
15 3(e) of the Sarna Agreement;

16 e. Although Ms. Sarna now claims that the inventions she patented during her
17 employment with BioCardia were covered by California Labor Code Section 2870, Ms.
18 Sarna never disclosed those inventions to BioCardia in writing, as required by Section 3(f)
19 of the Sarna Agreement;

20 f. Engaging in "employment, occupation, consulting or other business activity
21 directly related to the business" of BioCardia when she founded and worked on behalf of
22 nVision, as prohibited by Section 4(a) of the Sarna Agreement;

23 g. By engaging in consulting work on behalf of nVision without first reporting
24 the nature of the work and the time commitment of the proposed work, as prohibited by
25 Section 4(b) of the Sarna Agreement;

26 h. Keeping in her possession, and using for the benefit of nVision, confidential
27 BioCardia documents that she emailed to herself, as prohibited by Section 5 of the Sarna
28 Agreement; and

i. Violating several items in the BioCardia Conflict of Interest Guidelines, as prohibited by Section 8 of the Sarna Agreement.

3 145. BioCardia Lifesciences is informed and believes and on that basis alleges that the
4 Shareholder Defendants are sophisticated companies and investors focused on investments in or
5 acquisitions of early-stage companies (each an “Investment Target”) and, thus, are familiar with
6 intellectual property issues that Investment Targets have. These include, among other things, that
7 a former employer of a founder of an Investment Target might have a claim to ownership of the
8 inventions claimed by the Investment Target, or that the inventions claimed by the Investment
9 Target may be based on trade secrets misappropriated from a former employer because, among
10 other things.

- a. They had been contractually assigned by the founder to the founder's former employer;
- b. They were co-invented with an employee or employees of the founder's former employer; or
- c. They were based on information learned at and/or belonging to the former employer.

16 146. BioCardia Lifesciences is informed and believes and on that basis alleges that
17 because of, among other things, the intellectual property issues that an Investment Target might
18 have with a founder's former employer, the Shareholder Defendants customarily perform "due
19 diligence" on an Investment Target focusing particularly on ferreting out any issues that might
20 exist with the Investment Target's ownership or right to use its purported technology and
21 intellectual property.

22 147. BioCardia Lifesciences is informed and believes and on that basis alleges that the
23 Shareholder Defendants focused on investments in and acquiring early-stage medical device
24 companies and, therefore, knew, or at least should have known, that BioCardia, the company
25 nVision's founder, Ms. Surbhi Sarna, worked for immediately prior to nVision, was also a
26 medical device company working on the same type of medical device that nVision planned to
27 work on: diagnostic catheters.

28 148. BioCardia Lifesciences is informed and believes and on that basis alleges that, as

1 specialists in investments in or acquisitions of early stage medical device companies, the
 2 Shareholder Defendants knew or at least should have known there was a heightened risk – well
 3 beyond the risks inherent in any early stage company - that nVision’s technology and intellectual
 4 property actually belonged to BioCardia.

5 149. BioCardia Lifesciences is informed and believes and on that basis alleges that, in
 6 addition to the heightened risk inherent in the fact that nVision was focused on the same type of
 7 medical device development as was BioCardia (diagnostic catheters), the Shareholder Defendants
 8 knew that there was a likelihood that nVision’s claimed technology and intellectual property
 9 actually belonged to or had been misappropriated from BioCardia, because they knew or at least
 10 should have known through their due diligence of nVision that:

11 a. Ms. Sarna’s undergraduate major was molecular and cellular biology. She
 12 does not have any graduate degrees. Her work at BioCardia dealt with tracking device
 13 failures, ensuring label compliance, and obtaining materials from vendors. While at
 14 BioCardia, Ms. Sarna’s work responsibilities did not include designing or developing
 15 medical devices. BioCardia Lifesciences is informed and believes and on that basis
 16 alleges that Ms. Sarna’s only other experience in the medical device space involved
 17 similar tasks as the ones she performed at BioCardia. Ms. Sarna’s age, education, and
 18 work experience were highly unusual for someone who allegedly came up with a medical
 19 device and technique so revolutionary that a company like Boston Scientific would value
 20 it at hundreds of millions of dollars.

21 b. Ms. Sarna started consulting with BioCardia on September 15, 2008 and
 22 became a full-time employee of BioCardia on November 3, 2008, at which time she
 23 signed the Sarna Agreement, and where she worked until resigning in January 2012;

24 c. Ms. Sarna registered nVision as a Delaware corporation on September 28,
 25 2009, the year after she joined BioCardia and more than two years before she left
 26 BioCardia and apparently ran it in “stealth mode” to conceal its existence from BioCardia;

d. Ms. Sarna entered into a “Technology Transfer Agreement” “effective as of December 26, 2009 between Surbhi Sarna (the ‘Founder’), and nVision Medical Corporation, a Delaware corporation” more than two years before she left BioCardia.

e. In the Technology Transfer Agreement, Ms. Sarna assigned to nVision “All rights, title and interests in and to all intellectual property arising out of or related to the ‘nVision Medical; business plan, including, without limitation, all ideas, designs, techniques, processes, formulas, trade secrets, inventions, discoveries, improvements, research or development and test results, specifications, data, know-how, business methods, marketing plans, other business plans, strategies, forecasts, unpublished financial information, budgets, projections, business prospects, copyrights and trademarks (inclusive of all goodwill relate thereto), and the following trademark, copyright, and patent applications and registrations.” The patent application identified in the Technology Transfer Agreement is a “USPTO provisional patent application filed on or around September 29, 2009.”

f. Ms. Sarna only registered nVision to do business in California on February 21, 2012, about a month after she left BioCardia, when, BioCardia Lifesciences is informed and believes and on that basis alleges, she believed it was no longer possible to conceal nVision's existence from BioCardia.

g. BioCardia Lifesciences is informed and believes and on that basis alleges that the **incorporation** of nVision more than two years **before** Ms. Sarna left BioCardia, and the **registration** of nVision to do business in California only **after** she had left BioCardia, alone should have set off alarm bells in any competent due diligence conducted by or for anyone seeking to invest in nVision;

h. Ms. Sarna, in common with most Silicon Valley employees, was contractually obligated to assign to BioCardia inventions she made while working at BioCardia (see **Exhibit A** attached hereto-the Sarna Agreement), subject only to her proving that they were excluded by Labor Code § 2870, which BioCardia Lifesciences is informed and believes and on that basis alleges that anyone seeking to invest in nVision

1 would understand was unlikely given that both nVision and BioCardia were in the same
2 general area of medical devices (diagnostic catheters);

3 i. On January 25, 2011, while a BioCardia employee and a year before Ms.
4 Sarna left BioCardia, Ms. Sarna filed U.S. Provisional application No. 61/435,945 (“the
5 ’945 provisional patent application”);

6 j. On December 3, 2010, while still a BioCardia employee and a year before
7 Ms. Sarna left BioCardia, Ms. Sarna emailed Anula Jayasuriya, then affiliated with
8 Defendant Astia Angels nVision LLC and later affiliated with Defendant EXXclaim
9 Capital Partners I, L.P., and Linda Greub, then a partner at Defendant LMNVC, LLC,
10 from her BioCardia account requesting help conceptualizing the invention of the ’945
11 provisional patent application;

12 k. Ms. Sarna subsequently filed three other published applications claiming
13 priority to the ’945 provisional patent application;

14 l. On November 13, 2011, also while still a BioCardia employee, Ms. Sarna
15 filed a provisional application entitled “Device and method to confirm occlusion of
16 the fallopian tube”; and

17 m. Ms. Sarna subsequently filed Application No. 14/357,875, which claimed
18 priority to the ’120 provisional patent application.

19 150. BioCardia Lifesciences is informed and believes and on that basis alleges that the
20 Shareholder Defendants knew, or at least should have known, that the filing of all of these patent
21 applications while Ms. Sarna was employed by BioCardia, but which were assigned to nVision,
22 meant that the patent applications likely had been contractually assigned to BioCardia.

23 151. BioCardia Lifesciences is informed and believes and on that basis alleges that the
24 Shareholder Defendants also knew, or at least should have known, that the filing of all of these
25 patent applications while Ms. Sarna was employed by BioCardia, but which were assigned to
26 nVision, meant that there likely were unnamed BioCardia co-inventors on some or all of the
27 patent applications.

28 152. BioCardia Lifesciences is informed and believes and on that basis alleges that the

1 Shareholder Defendants also knew, or at least should have known, that the filing of all of these
 2 patent applications while Ms. Sarna was employed by BioCardia, but which were assigned to
 3 nVision, together with the other acts alleged above while Ms. Sarna was a BioCardia employee,
 4 meant that nVision's purported technology and intellectual property likely was based on
 5 misappropriated BioCardia trade secrets.

6 153. The risks undertaken by an investor who knows or should know that the
 7 technology and intellectual property claimed by an Investment Target likely belongs to a former
 8 employer as is with the case with the patents Ms. Sarna was contractually obligated to assign to
 9 BioCardia, or is likely based on trade secrets misappropriated from a former employer, is unlike
 10 any common investment and market risk. While common investment risks, if realized, might
 11 operate to reduce the value of the Investment Target and, therefore, the value of the investor's
 12 investment, an investor who knows or should know that the technology and intellectual property
 13 claimed by an Investment Target is likely based on patents rightfully owned by another or trade
 14 secrets misappropriated from another is exposed to the equitable rights of the rightful owner of
 15 the technology and intellectual property, including, as alleged below, the risk of disgorgement of
 16 all benefits of the investment.

17 154. Here, the Shareholder Defendants' investment in nVision was made with the
 18 actual or imputed knowledge that the technology and intellectual property claimed by Ms. Sarna
 19 and nVision was likely based on patents belonging to and trade secrets misappropriated from
 20 BioCardia; accordingly, they did not undertake a common investment risk but, rather, undertook
 21 the risk of disgorgement of all benefits from their investment.

22 155. The Shareholder Defendants' liability to BioCardia Lifesciences is direct, not
 23 vicarious, and does not require piercing nVision's corporate veil.

24 156. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 25 Shareholder Defendants made a conscious decision to participate in and further the wrongful acts
 26 of nVision and Ms. Sarna by investing in nVision and providing it with the funding necessary to
 27 commit the acts as herein alleged.

28 157. Alternatively, BioCardia Lifesciences is informed and believes and on that basis

1 alleges that the Shareholder Defendants were conscious wrongdoers because they acted with the
 2 knowledge or despite the known risk that nVision and Ms. Sarna had acted in violation of
 3 BioCardia Lifesciences' rights. Their investments in nVision were made "despite a known risk
 4 that the conduct in question violate[d] the rights of [BioCardia]." Under California law and
 5 Sections 51(3)(b) and 3 comment e, of the Restatement (Third) of Restitution and Unjust
 6 Enrichment, their decision to invest in nVision despite that known risk of liability – i.e., despite
 7 that "known unknown" – renders them "conscious wrongdoers" and places upon them the risk of
 8 liability by a disgorgement measure.

9 158. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 10 Shareholder Defendants provided funding to nVision that was a substantial factor in enabling
 11 nVision and Ms. Sarna to commit the acts as herein alleged, and that the Shareholder Defendants
 12 knowingly benefited from the acts as herein alleged.

13 159. The Shareholder Defendants are required to disgorge to BioCardia Lifesciences
 14 the amount of their unjust enrichment as a result of the acts alleged, including at least the amount
 15 Boston Scientific paid the Shareholder Defendants for their shares of stock in nVision.

16 160. BioCardia Lifesciences is informed and believes and on that basis alleges that
 17 Fortis, as Stockholders' Representative, is holding in trust approximately ten percent (10%) of the
 18 amount paid by Boston Scientific for the nVision stock of the Shareholder Defendants, among
 19 other shareholders, resulting from their provision of funding to nVision that was a substantial
 20 factor in enabling nVision and Ms. Sarna to commit the acts as herein alleged, and therefore
 21 Fortis is required to disgorge to BioCardia Lifesciences the amount it holds in trust for the
 22 Shareholder Defendants. The Shareholder Defendants are required to direct Fortis to disgorge to
 23 BioCardia Lifesciences any amounts received from Boston Scientific that Fortis is holding for the
 24 benefit of the Shareholder Defendants as a result of the Shareholders Defendants' unjust
 25 enrichment as a result of the acts alleged, including at least the amount Boston Scientific paid the
 26 Shareholder Defendants for their shares of stock in nVision.

27 161. As a further direct and proximate result of Ms. Sarna's breaches of the Sarna
 28 Agreement, Defendants have been unjustly enriched for example, in an amount equal to at least

1 what Boston Scientific paid for nVision. Defendants have been enriched by Ms. Sarna's breaches
2 of contract, reaping benefits they would not otherwise have achieved in the absence of the
3 breaches. Defendants received benefits in the form of intellectual property and money based on
4 Ms. Sarna's breaches of contract as alleged above. Defendants' retention of the benefits they
5 received from Ms. Sarna's breaches of contract is unjust as Ms. Sarna was not contractually
6 permitted to share these benefits with anyone else. As such, BioCardia is entitled to
7 disgorgement of all of Defendants' profits and consequential gains reaped from their unjust
8 enrichment as a result of Ms. Sarna's breaches of the Sarna Agreement.

9 162. In addition, a constructive trust should be imposed on nVision and Boston Scimed
10 on all right, title and interest to the '945 Provisional Application Family, the '120 Provisional
11 Application Family, the '472 Application Family, and the Additional Provisional Applications
12 and the trade secrets and other intellectual property taken by Ms. Sarna, and nVision and Boston
13 Scimed should be ordered to transfer or assign to BioCardia all of the forgoing.

COUNT III

163. BioCardia Lifesciences realleges paragraphs 1-162 inclusive.

Elements of Trade Secret Claim

20 164. A trade secret is “information, including a formula, pattern, compilation, program,
21 device, method, technique, or process, that: (1) Derives independent economic value, actual or
22 potential, from not being generally known to the public or to other persons who can obtain
23 economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable
under the circumstances to maintain its secrecy.” Cal. Civ. Code § 3426.1(d).

25 165. To plead a claim for trade secret misappropriation, a plaintiff must allege: "(1) the
26 plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used the plaintiff's trade
27 secret through improper means, and (3) the defendant's actions damaged the plaintiff." *Sargent*
28 *Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1665 (2003); *Space Data Corp. v. X*, 2017

1 U.S. Dist. LEXIS 22571 at *3, 2017 WL 5013363 (N.D. Cal. Feb. 16, 2017). “Improper means”
 2 is defined as “theft, bribery, misrepresentation, breach or inducement of a breach of a duty to
 3 maintain secrecy, or espionage through electronic or other means.” Cal. Civ. Code. § 3426.1(a).

4 166. Courts distinguish between “direct” and “indirect” trade secret misappropriation,
 5 the difference being whether the defendant obtained the trade secrets directly from the plaintiff or
 6 indirectly “from someone other than plaintiff.” *See Heller v. Cepia, L.L.C.*, 2012 U.S. Dist.
 7 LEXIS 660 at *17, 2012 WL 13572 (N.D. Cal. Jan. 4, 2012). A claim for indirect trade secret
 8 misappropriation must allege facts showing that the defendant: “(a) knew or had reason to know
 9 before the use or disclosure that the information was a trade secret and knew or had reason to
 10 know that the disclosing party had acquired it through improper means or was breaching a duty of
 11 confidentiality by disclosing it; or (b) knew or had reason to know it was a trade secret and that
 12 the disclosure was a mistake.” *Cal. Police Activities League v. Cal. Police Youth Charities, Inc.*,
 13 2009 U.S. Dist. LEXIS 20507 at *8, 2009 WL 537091 (N.D. Cal. Mar. 3, 2009).

14 **The Statute of Limitations Was Tolled Until BioCardia Became Aware of nVision’s**
 15 **Misappropriation**

16 167. The statute of limitations for breach of a contractual obligation to preserve a trade
 17 secret does not start until the breach was, or reasonably should have been discovered. *See, e.g.*,
 18 *April Enterprises, Inc. v. KTTV*, 147 Cal.App.3d 827, 831 (1983). The reason for this is that it is
 19 often difficult or impractical for a trade secret owner to determine whether someone has
 20 misappropriated a trade secret. It would be inequitable for the statute of limitations to be
 21 triggered by a breach, and even run, before the aggrieved party even realizes it has been harmed.

22 168. As more fully described in the discussion of “BioCardia’s First Awareness of Ms.
 23 Sarna’s Breach of Contract and Misappropriation of Trade Secrets” above, during and after her
 24 employment with BioCardia, Ms. Sarna and nVision concealed the trade secret misappropriation
 25 from detection. For example, Ms. Sarna never informed BioCardia that she had incorporated
 26 nVision Medical Corporation during her employment, or that nVision would develop a catheter
 27 system that would compete with BioCardia’s efforts to adapt its catheter offerings for use in
 28 gynecological applications. Ms. Sarna also never informed BioCardia that during her

1 employment she filed multiple provisional patent applications covering BioCardia trade secrets
 2 described in the March 2000 lab notebook entry that Dr. Altman explained to Ms. Sarna in or
 3 around May 2009 and assigned them to nVision.

4 169. Ms. Sarna's and nVision's fraudulent concealment of her wrongful acts tolled the
 5 statute of limitations for BioCardia's misappropriation claims. Therefore, the running of the
 6 statute of limitations was delayed until January 2019, when BioCardia actually discovered the
 7 fraudulent acts, because among other things, Ms. Sarna and nVision (a) concealed her
 8 wrongdoing from BioCardia which (b) she was contractually obligated to disclose to BioCardia
 9 (c) which concealment she did with the intent to defraud BioCardia (d) of which fraudulent acts
 10 BioCardia was unaware until January 2019 and upon which BioCardia would have acted earlier
 11 had it been earlier aware of them, causing BioCardia to sustain the damage alleged herein.

12 **Trade Secrets Disclosed During Meeting Between Dr. Altman and Surbhi Sarna**

13 170. **Diagnostic method of using a catheter inserted into a fallopian tube to obtain**
 14 **a solid or liquid biopsy of potentially diseased ovarian tissue or cells by, for example,**
 15 **advancing a guide catheter into the uterus to gain access to the ostium of a fallopian tube,**
 16 **advancing a second catheter system through the guide catheter and obtaining a sample of**
 17 **tissue through the second catheter that is from the ovary which may be analyzed**
 18 **biologically:**

19 a. This diagnostic method is a trade secret because it is a method, technique,
 20 or process, that derives actual or potential economic value from not being known and is
 21 subject to reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a
 22 method of using a catheter, which can equally be called a technique or process.

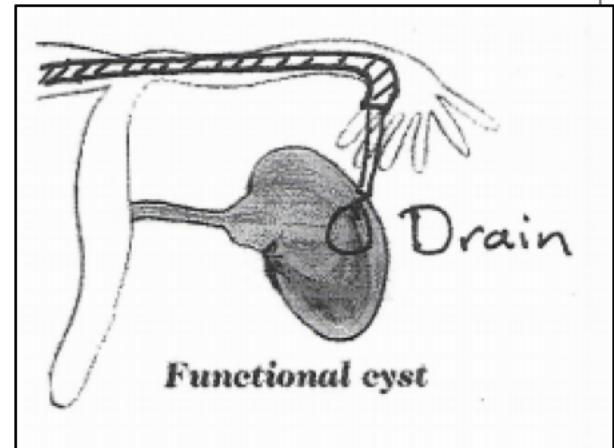
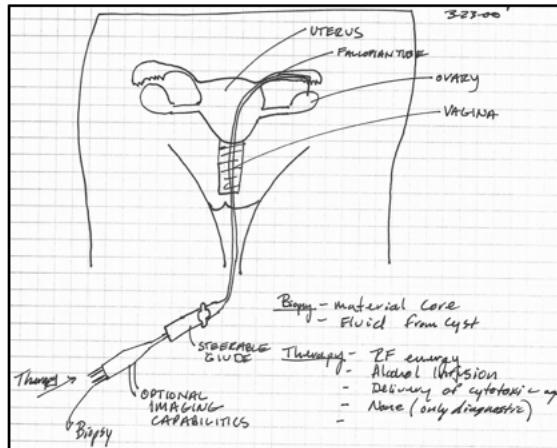
23 b. This trade secret derived both actual and potential value from not being
 24 generally known to the public. For example, as Ms. Sarna set out in her 2013 presentation
 25 on nVision, which BioCardia first reviewed in 2019, the addressable market for a non-
 26 invasive method for early detection of ovarian cancer was \$4 billion and involved roughly
 27 8 million patients per year. Dkt 1 at Ex. B at slide 29. In addition, Boston Scientific paid
 28 \$275 million to purchase nVision based in part on its commercial development of this

1 trade secret.

2 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade
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9 Engineering, to prevent disclosure to the public. Furthermore, BioCardia internal
10 documents containing confidential information were labelled "confidential" and all
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13 lab notebooks came with, a BioCardia memo on "Lab Notebook Document Control" to
14 preserve secrecy. Finally, visitors to BioCardia had to sign-in to gain access to the
15 facilities and were escorted by a company employee at all times. BioCardia has never had
16 more than approximately twenty employees and an appropriately sized facility, so the
17 presence of an unauthorized person would be recognized.

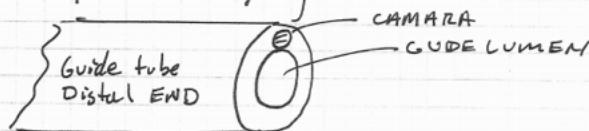
18 d. BioCardia Lifesciences is the owner of this trade secret because the two
19 individuals who conceived of and developed the trade secret, Drs. Peter Altman and
20 Simon Stertzler, both assigned all right, title, and interest in the intellectual property to
21 BioCardia, or its predecessor Hippocratic Engineering.

22 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he
23 described and explained a March 2000 lab notebook entry to her during an hour-long
24 meeting. The following excerpts are examples of disclosures from the notebook that
25 describe this trade secret:



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The steerable guide gains access through the vagina to the fallopian tube and may be facilitated by fiber optic imaging.



The steerable guide once positioned may be used to advance imaging probes such as rotating ultrasound transducers, biopsy probes, therapeutic probes, or combinations of these.

15 f. nVision directly misappropriated this trade secret by disclosing and using
16 the trade secret through improper means. For example, Section 2 of Ms. Sarna's
17 employment agreement with BioCardia required her to hold confidential information in
18 the strictest confidence and not to use the information except for the benefit of BioCardia.
19 For example, claim 1 of U.S. Patent No. 10,639,016 sets out all the components of this
20 trade secret. Ms. Sarna's efforts to develop and commercialize the Mako also
21 misappropriated this trade secret, since implementation of the Mako device such that the
22 evert balloon at the distal end of the catheter is used to collect cells from the fallopian
23 tube practices this trade secret. Mako documentation, such as the instructions for use, also
24 disclose this trade secret since the documents describe using a catheter to collect a sample
25 of potentially diseased cells in the fallopian tube. BioCardia Lifesciences is informed and
26 believes and on that basis alleges that nVision also misappropriated this trade secret
27 through improper disclosure when, for example, it consulted with various physicians
28

1 about the design, development, or clinical trials for the Mako device. As a result, Ms.
 2 Sarna's actions to acquire patents on this trade secret, develop and market the Mako
 3 device that implements this trade secret, and disclose the trade secret to practitioners as
 4 part of the design and development of the Mako product, all constitute misappropriation
 5 of this trade secret.

6 g. nVision directly and indirectly misappropriated this trade secret. For
 7 example, nVision obtained this trade secret from Ms. Sarna. nVision knew Ms. Sarna was
 8 an employee of BioCardia, a company that made catheter systems, and that Ms. Sarna
 9 filed for patents on catheter systems while still employed at BioCardia. Another example
 10 of nVision's misappropriation of this trade secret was the improper use and disclosure of
 11 this trade secret through the design, development, and documentation of their version of
 12 the Mako, a device called Cytuity. When Cytuity everts a balloon at the distal end of the
 13 catheter to collect a sample of potentially diseased cells from the fallopian tube, it
 14 practices this trade secret. Furthermore, Boston Scientific and Boston Scientific Scimed
 15 developed documentation for Cytuity as a result of nVision's misappropriation. *See, e.g.*,
 16 "Cytuity Directions For Use" Video available at
 17 <https://www.bostonscientific.com/content/gwc/en-US/products/cell-collection/cytuity--cell-collection-catheter/demo-video.html> (disclosing BioCardia trade secrets by showing
 18 an everted balloon at the distal end of the catheter collecting potentially diseased cells in
 19 the fallopian tube for analysis). BioCardia Lifesciences is informed and believes and on
 20 that basis alleges that nVision misappropriated this trade secret through improper
 21 disclosure when, for example, it consulted with various physicians about the design,
 22 development, or clinical trials (e.g., the nCYT trials) for the Cytuity device.

23 h. nVision's misappropriation damaged BioCardia Lifesciences. For
 24 example, because of nVision's misappropriation, the BioCardia Entities missed out on the
 25 \$275 million valuation Boston Scientific placed on the intellectual property. Furthermore,
 26 nVision's commercialization of this trade secret prevented the BioCardia Entities from
 27 having a monopoly on the method, along with the financial benefits that monopoly would

1 confer.

2 171. **Diagnostic method of inserting a catheter with imaging capability, such as**
 3 **cameras, fiber optics, or ultrasound imaging, on its distal end into a fallopian tube, by, for**
 4 **example, advancing a guide catheter into the uterus to gain access to the ostium of a**
 5 **fallopian tube, advancing a second catheter system through the guide catheter with**
 6 **ultrasound imaging, to enable navigation and sampling for biologic analysis:**

7 a. This diagnostic method is a trade secret because it is a method, technique,
 8 or process, that derives actual or potential economic value from not being known and is
 9 subject to reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a
 10 method of using a catheter, which can equally be called a technique or process.

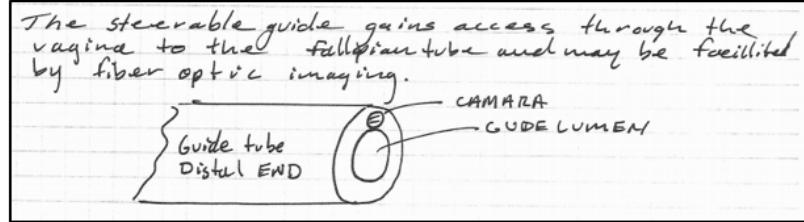
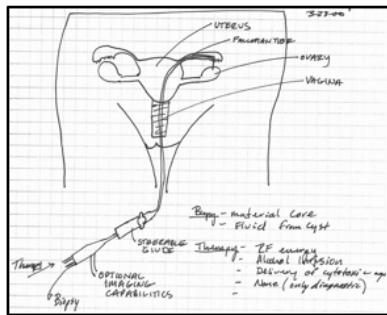
11 b. This trade secret derived both actual and potential value from not being
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 18 Mako, a device called Cytuity. Cytuity implements imaging capability at the distal end of the
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 20 misappropriated this trade secret through the improper disclosure of the secret. *See, e.g.,* "Cytuity
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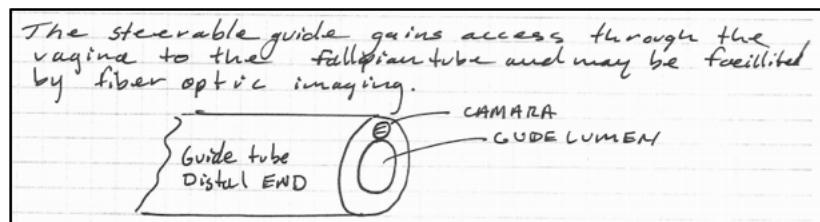
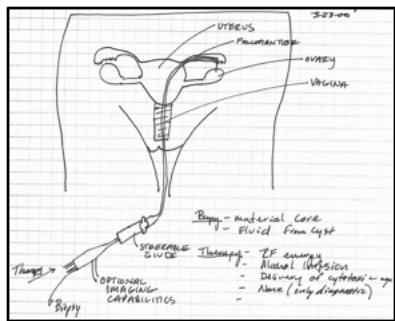
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 17 early detection of ovarian cancer was \$4 billion and involved roughly 8 million patients per year.
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 8 **imaging capabilities to enable navigation and imaging of ovarian cysts or tumors:**

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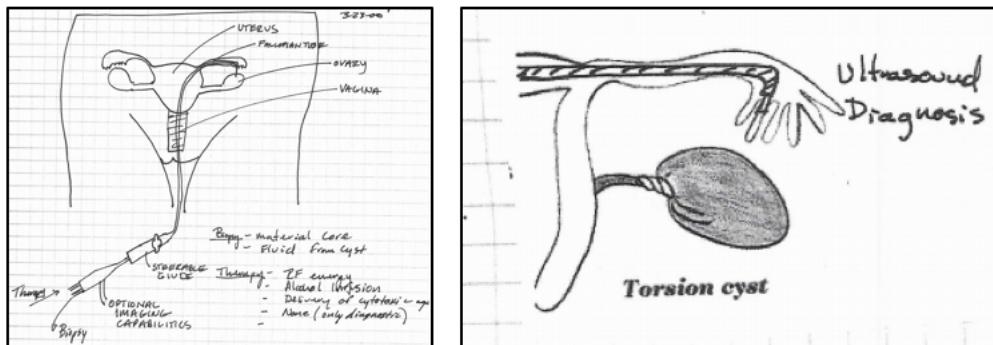
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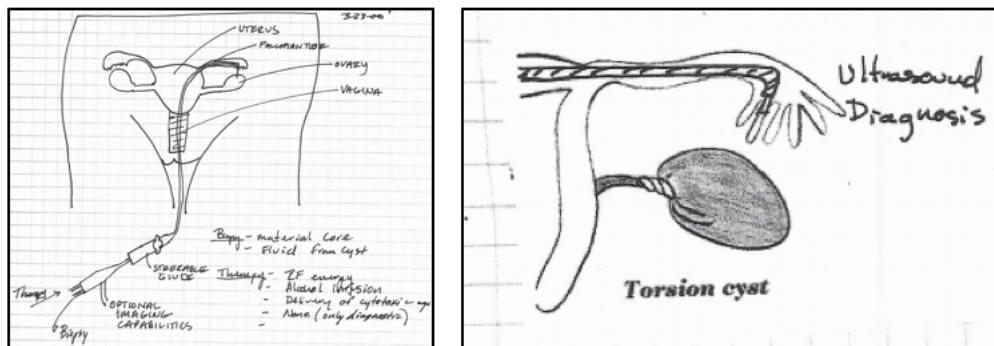
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 20 for use, also disclose this trade secret since the documents describe using a catheter with imaging
 21 capability at the distal end of the catheter in a manner described in this trade secret. BioCardia
 22 Lifesciences is informed and believes and on that basis alleges that nVision also misappropriated
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1 this trade secret through improper disclosure when, for example, it consulted with various
 2 physicians about the design, development, or clinical trials for the Mako device. As a result, Ms.
 3 Sarna's actions to acquire patents on this trade secret and assign them to nVision, to develop and
 4 market the Mako device that implements this trade secret, and disclose the trade secret to
 5 practitioners as part of the design and development of the Mako product, all constitute
 6 misappropriation of this trade secret.

7 g. nVision directly and indirectly misappropriated this trade secret. For example,
 8 nVision obtained this trade secret from Ms. Sarna and were conscious wrongdoers because they
 9 acted with the knowledge or despite the known risk that the information it obtained from Ms.
 10 Sarna was a trade secret acquired through improper means. nVision knew Ms. Sarna was an
 11 employee of BioCardia, a company that made catheter systems, and that Ms. Sarna filed for
 12 patents on catheter systems and assigned them to nVision while still employed at BioCardia.
 13 Another example of nVision's misappropriation of this trade secret was the improper use and
 14 disclosure of this trade secret through the design, development, and documentation of a new
 15 version of the Mako, a device called Cytuity. Cytuity implements imaging capability at the distal
 16 end of the catheter in the manner described in this trade secret. Furthermore, documentation for
 17 Cytuity also misappropriated this trade secret through the improper disclosure of the secret. *See,*
 18 *e.g.*, "Cytuity Directions For Use" Video available at
 19 [https://www.bostonscientific.com/content/gwc/en-US/products/cell-collection/cytuity--cell-](https://www.bostonscientific.com/content/gwc/en-US/products/cell-collection/cytuity--cell-collection-catheter/demo-video.html)
 20 [collection-catheter/demo-video.html](https://www.bostonscientific.com/content/gwc/en-US/products/cell-collection/cytuity--cell-collection-catheter/demo-video.html) (disclosing BioCardia trade secrets by implementing
 21 imaging capability in a manner described in this trade secret). BioCardia Lifesciences is
 22 informed and believes and on that basis alleges that nVision misappropriated this trade secret
 23 through improper disclosure when, for example, it consulted with various physicians about the
 24 design, development, or clinical trials (e.g., the nCYT trials) for the Cytuity device.

25 h. nVision's misappropriation damaged BioCardia Lifesciences. For example,
 26 because of nVision's misappropriation, the BioCardia Entities missed out on the \$275 million
 27 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision's
 28 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly

1 on the method, along with the financial benefits that monopoly would confer.

2 175. **Diagnostic method of inserting a catheter imaging capability, such as**
 3 **cameras, fiber optics, or ultrasound imaging, on its distal end into a fallopian tube by, for**
 4 **example, advancing a guide catheter into the uterus to gain access to the ostium of a**
 5 **fallopian tube, advancing a second catheter system through the guide catheter with**
 6 **ultrasound imaging, to enable navigation and imaging of an ovarian cyst or tumor, and to**
 7 **take an action selected from the set of (1) characterizing said cyst or said tumor or (2)**
 8 **planning therapeutic intervention of said cysts and said tumors:**

9 a. This diagnostic method is a trade secret because it is a method, technique, or
 10 process, that derives actual or potential economic value from not being known and is subject to
 11 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a
 12 catheter, which can equally be called a technique or process.

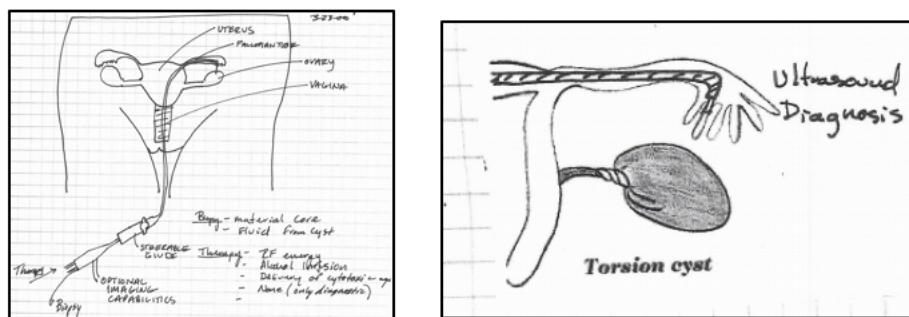
13 b. This trade secret derived both actual and potential value from not being generally
 14 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision,
 15 which BioCardia first reviewed in 2019, the addressable market for a non-invasive method for
 16 early detection of ovarian cancer was \$4 billion and involved roughly 8 million patients per year.
 17 Dkt 1 at Ex. B at slide 29. In addition, Boston Scientific paid \$275 million to purchase nVision
 18 based in part on its commercial development of this trade secret.

19 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
 20 The only place where the secret was disclosed was in the March 2000 entry in Dr. Altman's lab
 21 notebook. Dr. Altman kept this lab notebook in a secure location in his office. Access to the
 22 notebook itself was restricted, and, prior to this litigation, only four people had seen the contents
 23 of this notebook entry related to this disclosure: Daniel Rosenman, Dr. Simon Stertzler, Dr. Peter
 24 Altman, and Ms. Sarna. Each of these people entered into a non-disclosure agreement with
 25 BioCardia, or its predecessor Hippocratic Engineering, to prevent disclosure to the public.
 26 Furthermore, BioCardia internal documents containing confidential information were labelled
 27 "confidential" and all documents containing BioCardia confidential information that were
 28 distributed externally were marked "confidential." For example, BioCardia employees received,

1 and BioCardia lab notebooks came with, a BioCardia memo on “Lab Notebook Document
 2 Control” to preserve secrecy. Finally, visitors to BioCardia had to sign-in to gain access to the
 3 facilities and were escorted by a company employee at all times. BioCardia has never had more
 4 than approximately twenty employees and an appropriately sized facility, so the presence of an
 5 unauthorized person would be recognized.

6 d. BioCardia Lifesciences is the owner of this trade secret because the two
 7 individuals who conceived of and developed the trade secret, Drs. Peter Altman and Simon
 8 Stertzler, both assigned all right, title, and interest in the intellectual property to BioCardia, or its
 9 predecessor Hippocratic Engineering.

10 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he described and
 11 explained a March 2000 lab notebook entry to her during an hour-long meeting. The following
 12 excerpts are examples of disclosures from the notebook that describe this trade secret:



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 19 A fluid biopsy probe, such as a hollow helical needle
 20 may be rotated into the ovary to obtain a
 21 sample of the cyst. Such a probe could also be
 22 used to drain the cyst. Such a probe could also
 23 be used to deliver RF energy to kill tissue
 24 in the cyst, or to deliver alcohol or cytotoxic
 25 agents designed to introduce necrosis locally.

26 f. nVision directly misappropriated this trade secret by disclosing and using the trade
 27 secret through improper means. nVision obtained this trade secret from Ms. Sarna and was a
 28 conscious wrongdoer because it acted with the knowledge or despite the known risk that the
 29 information it obtained from Ms. Sarna was a trade secret acquired through improper means. For
 30 example, claim 1 of U.S. Patent No. 10,639,016 sets out all the components of this trade secret.

1 nVision's efforts to develop and commercialize the Mako also misappropriated this trade secret,
2 since, for example, implementation of the Mako device means using imaging capability to sample
3 tissue in the fallopian tube to characterize the ovarian state. Mako documentation, such as the
4 instructions for use, also disclose this trade secret since the documents describe using a catheter to
5 collect a sample of cells in the fallopian tube to determine ovarian state. BioCardia Lifesciences
6 is informed and believes and on that basis alleges that nVision also misappropriated this trade
7 secret through improper disclosure when, for example, it consulted with various physicians about
8 the design, development, or clinical trials for the Mako device. As a result, nVision's
9 development and marketing of the Mako device that implements this trade secret, and disclose the
10 trade secret to practitioners as part of the design and development of the Mako product, all
11 constitute misappropriation of this trade secret.

12 g. nVision directly and indirectly misappropriated this trade secret. nVision obtained
13 this trade secret from Ms. Sarna and was a conscious wrongdoer because it acted with the
14 knowledge or despite the known risk that the information it obtained from Ms. Sarna was a trade
15 secret acquired through improper means. nVision knew Ms. Sarna was an employee of
16 BioCardia, a company that made catheter systems, and that Ms. Sarna filed for patents on catheter
17 systems and assigned them to nVision while still employed at BioCardia. Another example of
18 nVision's misappropriation of this trade secret was the improper use and disclosure of this trade
19 secret through the design, development, and documentation of a new version of the Mako, a
20 device called Cytuity. When Cytuity uses imaging capability to help collect a sample from the
21 fallopian tube to determine ovarian state, it practices this trade secret. Furthermore,
22 documentation developed for Cytuity also misappropriated this trade secret through the improper
23 disclosure of the secret. *See, e.g.*, "Cytuity Directions For Use" Video available at
24 [https://www.bostonscientific.com/content/gwc/en-US/products/cell-collection/cytuity--cell-](https://www.bostonscientific.com/content/gwc/en-US/products/cell-collection/cytuity--cell-collection-catheter/demo-video.html)
25 [collection-catheter/demo-video.html](https://www.bostonscientific.com/content/gwc/en-US/products/cell-collection/cytuity--cell-collection-catheter/demo-video.html) (disclosing BioCardia trade secrets by showing Cytuity
26 using imaging capabilities to navigate a fallopian tube to collect a sample to determine ovarian
27 state). BioCardia Lifesciences is informed and believes and on that basis alleges that nVision
28 misappropriated this trade secret through improper disclosure when, for example, it consulted

1 with various physicians about the design, development, or clinical trials (e.g., the nCYT trials) for
 2 the Cytuity device.

3 h. nVision's misappropriation damaged BioCardia Lifesciences. For example,
 4 because of nVision's misappropriation, the BioCardia Entities missed out on the \$275 million
 5 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision's
 6 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
 7 on the method, along with the financial benefits that monopoly would confer.

8 176. **Diagnostic method of inserting a catheter imaging capability, such as**
 9 **cameras, fiber optics, or ultrasound imaging, on its distal end into a fallopian tube by, for**
 10 **example, advancing a guide catheter into the uterus to gain access to the ostium of a**
 11 **fallopian tube, advancing a second catheter system through the guide catheter with imaging**
 12 **capability to enable navigation and imaging of ovarian cysts or tumors and to take an action**
 13 **selected from the set of (1) characterizing said cyst or said tumor or (2) planning**
 14 **therapeutic intervention of said cysts and said tumors:**

15 a. This diagnostic method is a trade secret because it is a method, technique, or
 16 process, that derives actual or potential economic value from not being known and is subject to
 17 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a
 18 catheter, which can equally be called a technique or process.

19 b. This trade secret derived both actual and potential value from not being generally
 20 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision,
 21 which BioCardia first reviewed in 2019, the addressable market for a non-invasive method for
 22 early detection of ovarian cancer was \$4 billion and involved roughly 8 million patients per year.
 23 Dkt 1 at Ex. B at slide 29. In addition, Boston Scientific paid \$275 million to purchase nVision
 24 based in part on its commercial development of this trade secret.

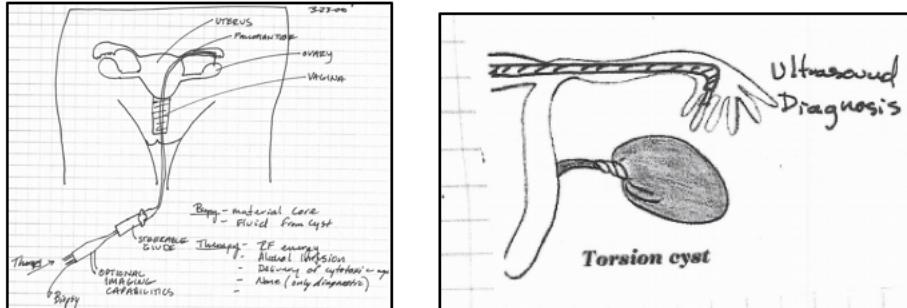
25 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
 26 The only place where the secret was disclosed was in the March 2000 entry in Dr. Altman's lab
 27 notebook. Dr. Altman kept this lab notebook in a secure location in his office. Access to the
 28 notebook itself was restricted, and, prior to this litigation, only four people had seen the contents

1 of this notebook entry related to this disclosure: Daniel Rosenman, Dr. Simon Stertzer, Dr. Peter
2 Altman, and Ms. Sarna. Each of these people entered into a non-disclosure agreement with
3 BioCardia, or its predecessor Hippocratic Engineering, to prevent disclosure to the public.
4 Furthermore, BioCardia internal documents containing confidential information were labelled
5 “confidential” and all documents containing BioCardia confidential information that were
6 distributed externally were marked “confidential.” For example, BioCardia employees received,
7 and BioCardia lab notebooks came with, a BioCardia memo on “Lab Notebook Document
8 Control” to preserve secrecy. Finally, visitors to BioCardia had to sign-in to gain access to the
9 facilities and were escorted by a company employee at all times. BioCardia has never had more
10 than approximately twenty employees and an appropriately sized facility, so the presence of an
11 unauthorized person would be recognized.

12 d. BioCardia Lifesciences is the owner of this trade secret because the two
13 individuals who conceived of and developed the trade secret, Drs. Peter Altman and Simon
14 Stertzer, both assigned all right, title, and interest in the intellectual property to BioCardia, or its
15 predecessor Hippocratic Engineering.

16 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he described and
17 explained a March 2000 lab notebook entry to her during an hour-long meeting. The following
18 excerpts are examples of disclosures from the notebook that describe this trade secret:

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A fluid biopsy probe, such as a hollow helical needle, may be rotated into the ovary to obtain a sample of the cyst. Such a probe could also be used to drain the cyst. Such a probe could also be used to deliver RF energy to kill tissue in the cyst, or to deliver alcohol or cytotoxic agents designed to introduce necrosis locally.

f. nVision directly misappropriated this trade secret by disclosing and using the trade secret through improper means. For example, claim 1 of U.S. Patent No. 10,639,016 sets out all the components of this trade secret. nVision's efforts to develop and commercialize the Mako also misappropriated this trade secret, since, for example, implementation of the Mako device means using imaging capability to sample tissue in the fallopian tube to characterize the ovarian state. Mako documentation, such as the instructions for use, also disclose this trade secret since the documents describe using a catheter to collect a sample of cells in the fallopian tube to determine ovarian state. BioCardia Lifesciences is informed and believes and on that basis alleges that nVision also misappropriated this trade secret through improper disclosure when, for example, it consulted with various physicians about the design, development, or clinical trials for the Mako device. As a result, nVision's development and marketing of the Mako device that implements this trade secret, and disclose the trade secret to practitioners as part of the design and development of the Mako product, all constitute misappropriation of this trade secret.

g. nVision directly and indirectly misappropriated this trade secret by, for example, through the design, development, and documentation of a new version of the Mako, a device called Cytuity. When Cytuity uses imaging capability to help collect a sample from the fallopian tube to determine ovarian state, it practices this trade secret. Furthermore, documentation

1 developed for Cytuity also misappropriated this trade secret through the improper disclosure of
 2 the secret. *See, e.g.*, “Cytuity Directions For Use” Video available at
 3 [https://www.bostonscientific.com/content/gwc/en-US/products/cell-collection/cytuity--cell-
 4 collection-catheter/demo-video.html](https://www.bostonscientific.com/content/gwc/en-US/products/cell-collection/cytuity--cell-collection-catheter/demo-video.html) (disclosing BioCardia trade secrets by showing Cytuity
 5 using imaging capabilities to navigate a fallopian tube to collect a sample to determine ovarian
 6 state). BioCardia Lifesciences is informed and believes and on that basis alleges that nVision
 7 misappropriated this trade secret through improper disclosure when, for example, it consulted
 8 with various physicians about the design, development, or clinical trials (e.g., the nCYT trials) for
 9 the Cytuity device.

10 h. nVision’s misappropriation damaged BioCardia Lifesciences. For example,
 11 because of nVision’s misappropriation, the BioCardia Entities missed out on the \$275 million
 12 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision’s
 13 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
 14 on the method, along with the financial benefits that monopoly would confer.

15 177. **Diagnostic method and devices for advancing a tissue-sampling element to the**
 16 **fallopian tube, fimbria, or ovary to take a solid or fluid tissue sample, by, for example,**
 17 **advancing a guide catheter into the uterus to gain access to the ostium of a fallopian tube,**
 18 **advancing a second catheter system having a tissue-sampling element through the guide**
 19 **catheter and advancing the tissue-sampling element to obtain a liquid or solid sample for**
 20 **biologic analysis:**

21 a. This diagnostic method is a trade secret because it is a method, technique, or
 22 process, that derives actual or potential economic value from not being known, and is subject to
 23 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a
 24 catheter, which can equally be called a technique or process.

25 b. This trade secret derived both actual and potential value from not being generally
 26 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision,
 27 which BioCardia first reviewed in 2019, the addressable market for a non-invasive method for
 28 early detection of ovarian cancer was \$4 billion and involved roughly 8 million patients per year.

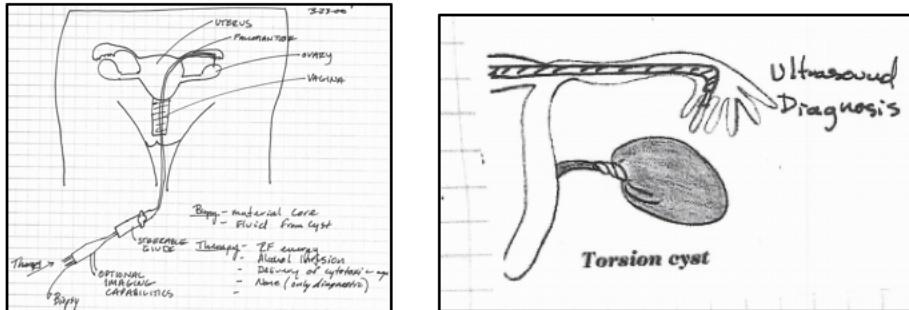
1 Dkt 1 at Ex. B at slide 29. In addition, Boston Scientific paid \$275 million to purchase nVision
 2 based in part on its commercial development of this trade secret.

3 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
 4 The only place where the secret was disclosed was in the March 2000 entry in Dr. Altman's lab
 5 notebook. Dr. Altman kept this lab notebook in a secure location in his office. Access to the
 6 notebook itself was restricted, and, prior to this litigation, only four people had seen the contents
 7 of this notebook entry related to this disclosure: Daniel Rosenman, Dr. Simon Stertzler, Dr. Peter
 8 Altman, and Ms. Sarna. Each of these people entered into a non-disclosure agreement with
 9 BioCardia, or its predecessor Hippocratic Engineering, to prevent disclosure to the public.
 10 Furthermore, BioCardia internal documents containing confidential information were labelled
 11 "confidential" and all documents containing BioCardia confidential information that was released
 12 externally were marked "confidential." For example, BioCardia employees received, and
 13 BioCardia lab notebooks came with, a BioCardia memo on "Lab Notebook Document Control" to
 14 preserve secrecy. Finally, visitors to BioCardia had to sign-in to gain access to the facilities and
 15 were escorted by a company employee at all times. BioCardia has only ever had approximately
 16 twenty employees and an appropriately sized facility, so the presence of an unauthorized person
 17 would be recognized.

18 d. BioCardia Lifesciences is the owner of this trade secret because the two
 19 individuals who conceived of and developed the trade secret, Drs. Peter Altman and Simon
 20 Stertzler, both assigned all right, title, and interest in the intellectual property to BioCardia, or its
 21 predecessor Hippocratic Engineering.

22 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he described and
 23 explained a March 2000 lab notebook entry to her during an hour-long meeting. The following
 24 excerpts are examples of disclosures from the notebook that describe this trade secret:

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 26
 27
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A fluid biopsy probe, such as a hollow helical needle may be rotated into the ovary to obtain a sample of the cyst. Such a probe could also be used to drain the cyst. Such a probe could also be used to deliver RF energy to kill tissue in the cyst, or to deliver alcohol or cytotoxic agents designed to introduce necrosis locally.

f. nVision directly misappropriated this trade secret by disclosing this trade secret in claim 1 of U.S. Patent No. 10,639,016, which sets out all the components of this trade secret. nVision's efforts to develop and commercialize the Mako also misappropriated this trade secret, since implementation of the Mako device, such that the evertng balloon at the distal end of the catheter is used to collect cells from the fallopian tube, practices this trade secret. Mako documentation, such as the instructions for use, also disclose this trade secret since the documents describe using a catheter to collect a sample of potentially diseased cells in the fallopian tube. BioCardia Lifesciences is informed and believes and on that basis alleges that, nVision also misappropriated this trade secret through improper disclosure when, for example, its President, Ms. Sarna, consulted with various physicians about the design, development, or clinical trials for the Mako device. As a result, nVision's actions to acquire patents on this trade secret, develop and market the Mako device that implements this trade secret, and disclose the trade secret to practitioners as part of the design and development of the Mako product, all constitute misappropriation of this trade secret.

h. nVision's misappropriation damaged BioCardia Lifesciences. For example, because of nVision's misappropriation, the BioCardia Entities missed out on the \$275 million valuation Boston Scientific placed on the intellectual property. Furthermore, nVision's commercialization of this trade secret prevented the BioCardia Entities from having a monopoly

1 on the method, along with the financial benefits that monopoly would confer.

2 178. **Diagnostic method and devices to be used for tissue-sampling from the**
 3 **fallopian tube, fimbria, or ovary by taking a solid or fluid tissue sample, by, for example,**
 4 **advancing a guide catheter into the uterus to gain access to the ostium of a fallopian tube,**
 5 **advancing a second catheter system having a penetrating element through the guide**
 6 **catheter and advancing the penetrating element consisting of a hollow helical needle into the**
 7 **fallopian tube, fimbria, or ovary to obtain a liquid or solid sample for biologic analysis:**

8 a. This diagnostic method is a trade secret because it is a method, technique, or
 9 process, that derives actual or potential economic value from not being known, and is subject to
 10 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a
 11 catheter, which can equally be called a technique or process.

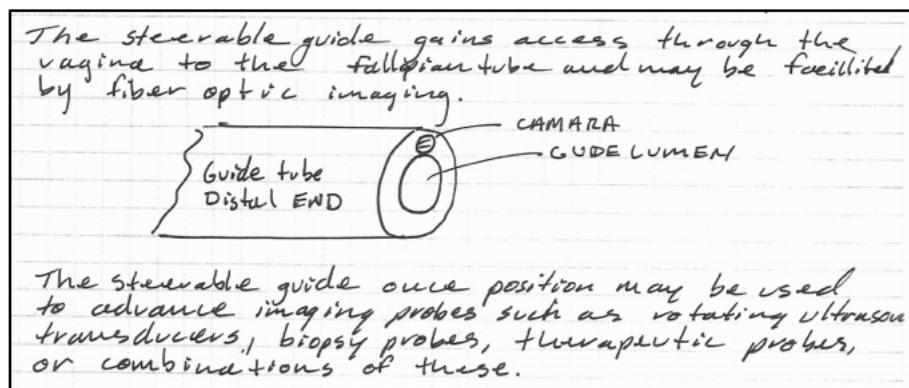
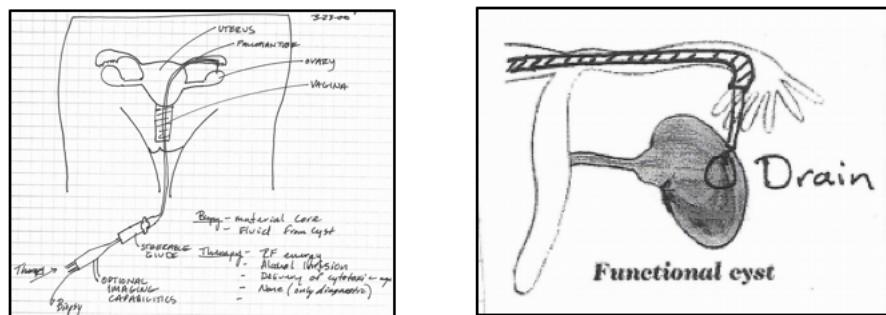
12 b. This trade secret derived both actual and potential value from not being generally
 13 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision,
 14 which BioCardia first reviewed in 2019, the addressable market for a non-invasive method for
 15 early detection of ovarian cancer was \$4 billion and involved roughly 8 million patients per year.
 16 Dkt 1 at Ex. B at slide 29. In addition, Boston Scientific paid \$275 million to purchase nVision
 17 based in part on its commercial development of this trade secret.

18 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
 19 The only place where the secret was disclosed was in the March 2000 entry in Dr. Altman's lab
 20 notebook. Dr. Altman kept this lab notebook in a secure location in his office. Access to the
 21 notebook itself was restricted, and, prior to this litigation, only four people had seen the contents
 22 of this notebook entry related to this disclosure: Daniel Rosenman, Dr. Simon Stertzler, Dr. Peter
 23 Altman, and Ms. Sarna. Each of these people entered into a non-disclosure agreement with
 24 BioCardia, or its predecessor Hippocratic Engineering, to prevent disclosure to the public.
 25 Furthermore, BioCardia internal documents containing confidential information were labelled
 26 "confidential" and all documents containing BioCardia confidential information that was released
 27 externally were marked "confidential." For example, BioCardia employees received, and
 28 BioCardia lab notebooks came with, a BioCardia memo on "Lab Notebook Document Control" to

1 preserve secrecy. Finally, visitors to BioCardia had to sign-in to gain access to the facilities and
 2 were escorted by a company employee at all times. BioCardia has only ever had approximately
 3 twenty employees and an appropriately sized facility, so the presence of an unauthorized person
 4 would be recognized.

5 d. BioCardia Lifesciences is the owner of this trade secret because the two
 6 individuals who conceived of and developed the trade secret, Drs. Peter Altman and Simon
 7 Stertz, both assigned all right, title, and interest in the intellectual property to BioCardia, or its
 8 predecessor Hippocratic Engineering.

9 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he described and
 10 explained a March 2000 lab notebook entry to her during an hour-long meeting. The following
 11 excerpts are examples of disclosures from the notebook that describe this trade secret:



24 f. nVision directly misappropriated this trade secret by disclosing and using the trade
 25 secret through improper means. For example, claim 1 of U.S. Patent No. 10,639,016 sets out all
 26 the components of this trade secret. nVision's efforts to develop and commercialize the Mako
 27 also misappropriated this trade secret, since implementation of the Mako device, such that the
 28

1 everting balloon at the distal end of the catheter is used to collect cells from the fallopian tube,
 2 practices this trade secret. Mako documentation, such as the instructions for use, also disclose
 3 this trade secret since the documents describe using a catheter to collect a sample of potentially
 4 diseased cells in the fallopian tube. BioCardia Lifesciences is informed and believes and on that
 5 basis alleges that nVision also misappropriated this trade secret through improper disclosure
 6 when, for example, nVision consulted with various physicians about the design, development, or
 7 clinical trials for the Mako device. As a result, nVision's actions to acquire patents on this trade
 8 secret, develop and market the Mako device that implements this trade secret, and disclose the
 9 trade secret to practitioners as part of the design and development of the Mako product, all
 10 constitute misappropriation of this trade secret.

11 h. nVision's misappropriation damaged BioCardia Lifesciences. For example,
 12 because of nVision's misappropriation, the BioCardia Entities missed out on the \$275 million
 13 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision's
 14 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
 15 on the method, along with the financial benefits that monopoly would confer.

16 179. **Diagnostic method and devices to be used for tissue-sampling from the**
 17 **fallopian tube, fimbria, or ovary by taking a solid or fluid tissue sample, by, for example,**
 18 **advancing a guide catheter into the uterus to gain access to the ostium of a fallopian tube,**
 19 **advancing a second catheter system having a tissue-sampling element through the guide**
 20 **catheter and advancing the tissue-sampling element into the fallopian tube, fimbria, or**
 21 **ovary to obtain a liquid or solid sample for biologic analysis:**

22 a. This diagnostic method is a trade secret because it is a method, technique, or
 23 process, that derives actual or potential economic value from not being known, and is subject to
 24 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a
 25 catheter, which can equally be called a technique or process.

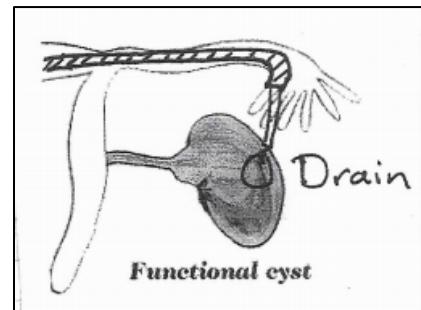
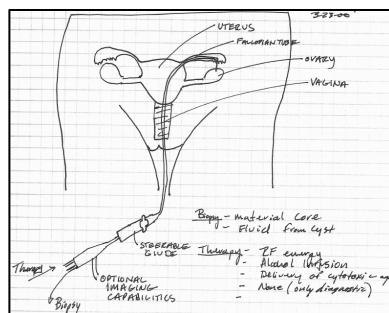
26 b. This trade secret derived both actual and potential value from not being generally
 27 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision,
 28 which BioCardia first reviewed in 2019, the addressable market for a non-invasive method for

1 early detection of ovarian cancer was \$4 billion and involved roughly 8 million patients per year.
2 Dkt 1 at Ex. B at slide 29. In addition, Boston Scientific paid \$275 million to purchase nVision
3 based in part on its commercial development of this trade secret.

4 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
5 The only place where the secret was disclosed was in the March 2000 entry in Dr. Altman's lab
6 notebook. Dr. Altman kept this lab notebook in a secure location in his office. Access to the
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8 of this notebook entry related to this disclosure: Daniel Rosenman, Dr. Simon Stertzer, Dr. Peter
9 Altman, and Ms. Sarna. Each of these people entered into a non-disclosure agreement with
10 BioCardia, or its predecessor Hippocratic Engineering, to prevent disclosure to the public.
11 Furthermore, BioCardia internal documents containing confidential information were labelled
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14 BioCardia lab notebooks came with, a BioCardia memo on "Lab Notebook Document Control" to
15 preserve secrecy. Finally, visitors to BioCardia had to sign-in to gain access to the facilities and
16 were escorted by a company employee at all times. BioCardia has only ever had approximately
17 twenty employees and an appropriately sized facility, so the presence of an unauthorized person
18 would be recognized.

19 d. BioCardia Lifesciences is the owner of this trade secret because the two
20 individuals who conceived of and developed the trade secret, Drs. Peter Altman and Simon
21 Stertzer, both assigned all right, title, and interest in the intellectual property to BioCardia, or its
22 predecessor Hippocratic Engineering.

23 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he described and
24 explained a March 2000 lab notebook entry to her during an hour-long meeting. The following
25 excerpts are examples of disclosures from the notebook that describe this trade secret:
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The steerable guide gains access through the vagina to the fallopian tube and may be facilitated by fiber optic imaging.



The steerable guide once positioned may be used to advance imaging probes such as rotating ultrasound transducers, biopsy probes, therapeutic probes, or combinations of these.

f. nVision misappropriated this trade secret by disclosing and using the trade secret through improper means. For example, claim 1 of U.S. Patent No. 10,639,016 sets out all the components of this trade secret. nVision’s efforts to develop and commercialize the Mako also misappropriated this trade secret, since implementation of the Mako device, such that the everting balloon at the distal end of the catheter is used to collect cells from the fallopian tube, practices this trade secret. Mako documentation, such as the instructions for use, also disclose this trade secret since the documents describe using a catheter to collect a sample of potentially diseased cells in the fallopian tube. BioCardia Lifesciences is informed and believes and on that basis alleges that nVision also misappropriated this trade secret through improper disclosure when, for example, nVision consulted with various physicians about the design, development, or clinical trials for the Mako device. As a result, nVision’s actions to acquire patents on this trade secret, develop and market the Mako device that implements this trade secret, and disclose the trade secret to practitioners as part of the design and development of the Mako product, all constitute misappropriation of this trade secret.

g. nVision's misappropriation damaged BioCardia Lifesciences. For example,

1 because of nVision's misappropriation, the BioCardia Entities missed out on the \$275 million
 2 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision's
 3 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
 4 on the method, along with the financial benefits that monopoly would confer.

5 180. Therapeutic method of inserting a catheter with imaging capability, such as
 6 cameras, fiber optics, or ultrasound imaging, on its distal end into a fallopian tube to
 7 advance a therapy, by, for example, advancing a guide catheter into the uterus to gain access
 8 to the ostium of a fallopian tube, advancing a second catheter system through the guide
 9 catheter with imaging capability, to enable navigation and imaging of an ovarian cyst or
 10 tumor, and to take an action selected from the set of (1) ablating regions of the ovary, (2)
 11 delivering controlled release drug delivery matrices to relevant tissue in and around the
 12 ovary, or (3) draining the tissue mass penetrated by the hollow penetrating element:

13 a. This therapeutic method is a trade secret because it is a method, technique, or
 14 process, that derives actual or potential economic value from not being known, and is subject to
 15 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a
 16 catheter, which can equally be called a technique or process.

17 b. This trade secret derived both actual and potential value from not being generally
 18 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision,
 19 which BioCardia first reviewed in 2019, the addressable market for a non-invasive method for
 20 early detection of ovarian cancer was \$4 billion and involved roughly 8 million patients per year.
 21 Dkt 1 at Ex. B at slide 29. In addition, Boston Scientific paid \$275 million to purchase nVision
 22 based in part on its commercial development of this trade secret.

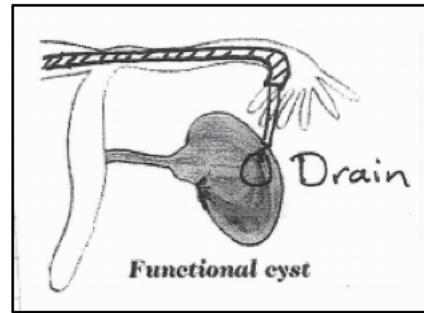
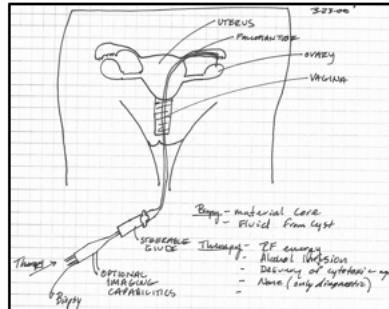
23 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
 24 The only place where the secret was disclosed was in the March 2000 entry in Dr. Altman's lab
 25 notebook. Dr. Altman kept this lab notebook in a secure location in his office. Access to the
 26 notebook itself was restricted, and, prior to this litigation, only four people had seen the contents
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8 twenty employees and an appropriately sized facility, so the presence of an unauthorized person
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10 d. BioCardia Lifesciences is the owner of this trade secret because the two
11 individuals who conceived of and developed the trade secret, Drs. Peter Altman and Simon
12 Stertz, both assigned all right, title, and interest in the intellectual property to BioCardia, or its
13 predecessor Hippocratic Engineering.

14 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he described and
15 explained a March 2000 lab notebook entry to her during an hour-long meeting. The following
16 excerpts are examples of disclosures from the notebook that describe this trade secret:

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A fluid biopsy probe, such as a hollow helical needle may be rotated into the ovary to obtain a sample of the cyst. Such a probe could also be used to drain the cyst. Such a probe could also be used to deliver RF energy to kill tissue in the cyst, or to deliver alcohol or cytotoxic agents designed to introduce necrosis locally.

The steerable guide gains access through the vagina to the fallopian tube and may be facilitated by fiber optic imaging.



The steerable guide once positioned may be used to advance imaging probes such as rotating ultrasound transducers, biopsy probes, therapeutic probes, or combinations of these.

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1 trade secret to practitioners as part of the design and development of the Mako product, all
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 4 because of nVision's misappropriation, the BioCardia Entities missed out on the \$275 million
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 6 Boston Scientific's commercialization of this trade secret prevented the BioCardia Entities from
 7 having a monopoly on the method, along with the financial benefits that monopoly would confer.

8 181. **Therapeutic method of inserting a catheter with imaging, such as cameras,**
 9 **fiber optics, or ultrasound imaging, on its distal end into a fallopian tube to advance a**
 10 **therapy, by, for example, advancing a guide catheter into the uterus to gain access to the**
 11 **ostium of a fallopian tube, advancing a second catheter system through the guide catheter**
 12 **with ultrasound imaging, to enable navigation and imaging of an ovarian cyst or tumor, and**
 13 **to take an action selected from the set of (1) ablating regions of the ovary using**
 14 **radiofrequency energy or (2) ablating the regions of the ovary by the delivery of alcohol:**

15 a. This therapeutic method is a trade secret because it is a method, technique, or
 16 process, that derives actual or potential economic value from not being known, and is subject to
 17 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a
 18 catheter, which can equally be called a technique or process.

19 b. This trade secret derived both actual and potential value from not being generally
 20 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision,
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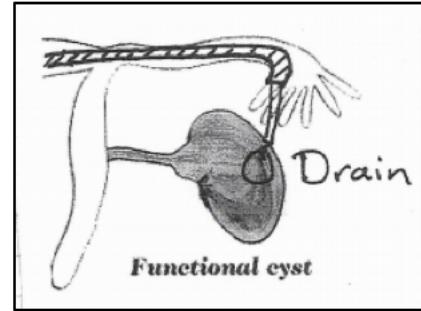
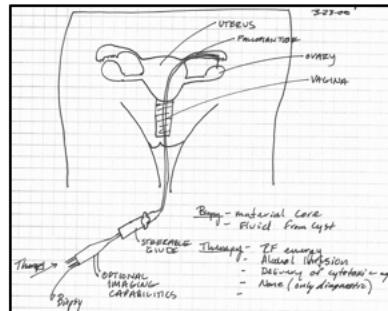
25 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
 26 The only place where the secret was disclosed was in the March 2000 entry in Dr. Altman's lab
 27 notebook. Dr. Altman kept this lab notebook in a secure location in his office. Access to the
 28 notebook itself was restricted, and, prior to this litigation, only four people had seen the contents

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11 would be recognized.

12 d. BioCardia Lifesciences is the owner of this trade secret because the two
13 individuals who conceived of and developed the trade secret, Drs. Peter Altman and Simon
14 Stertzer, both assigned all right, title, and interest in the intellectual property to BioCardia, or its
15 predecessor Hippocratic Engineering.

16 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he described and
17 explained a March 2000 lab notebook entry to her during an hour-long meeting. The following
18 excerpts are examples of disclosures from the notebook that describe this trade secret:

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A fluid biopsy probe, such as a hollow helical needle may be rotated into the ovary to obtain a sample of the cyst. Such a probe could also be used to drain the cyst. Such a probe could also be used to deliver RF energy to kill tissue in the cyst, or to deliver alcohol or cytotoxic agents designed to introduce necrosis locally.

The steerable guide gains access through the vagina to the fallopian tube and may be facilitated by fiber optic imaging.



The steerable guide once positioned may be used to advance imaging probes such as rotating ultrasound transducers, biopsy probes, therapeutic probes, or combinations of these.

f. nVision directly misappropriated this trade secret by disclosing and using the trade secret through improper means. For example, claim 1 of PCT/US Patent Application No. 2012/022,619 sets out all the components of this trade secret. nVision's efforts to develop and commercialize the Mako also misappropriated this trade secret, since implementation of the Mako device utilizes imaging capability at the distal end of the catheter as described in this trade secret. Mako documentation, such as the instructions for use, also disclose this trade secret since the documents describe using a catheter with imaging capability at the distal end of the catheter in a manner described in this trade secret. BioCardia Lifesciences is informed and believes and on that basis alleges that nVision also misappropriated this trade secret through improper disclosure when, for example, nVision consulted with various physicians about the design, development, or clinical trials for the Mako device. As a result, nVision's actions to acquire patents on this trade secret, develop and market the Mako device that implements this trade secret, and disclose the trade secret to practitioners as part of the design and development of the Mako product, all

1 constitute misappropriation of this trade secret.

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 4 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision's
 5 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
 6 on the method, along with the financial benefits that monopoly would confer.

7 182. **Therapeutic method and devices to be used through the vagina, uterus, and**
 8 **fallopian tube to advance a hollow element from a catheter to assist with tissue sampling,**
 9 **where, for example, the hollow element is connected to a fluid conduit within the catheter**
 10 **system that is connected to a reservoir outside of the body:**

11 a. This therapeutic method is a trade secret because it is a method, technique, or
 12 process, that derives actual or potential economic value from not being known, and is subject to
 13 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a
 14 catheter, which can equally be called a technique or process.

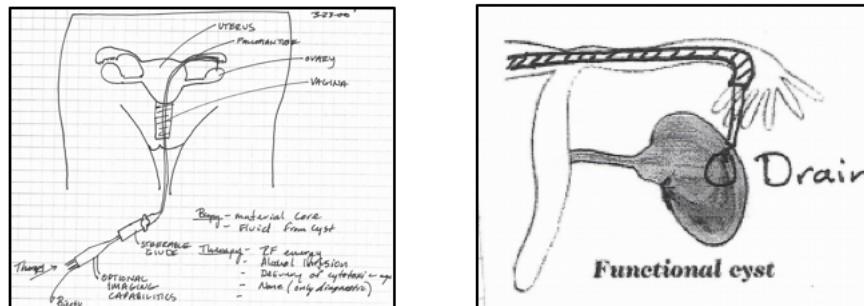
15 b. This trade secret derived both actual and potential value from not being generally
 16 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision,
 17 which BioCardia first reviewed in 2019, the addressable market for a non-invasive method for
 18 early detection of ovarian cancer was \$4 billion and involved roughly 8 million patients per year.
 19 Dkt 1 at Ex. B at slide 29. In addition, Boston Scientific paid \$275 million to purchase nVision
 20 based in part on its commercial development of this trade secret.

21 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
 22 The only place where the secret was disclosed was in the March 2000 entry in Dr. Altman's lab
 23 notebook. Dr. Altman kept this lab notebook in a secure location in his office. Access to the
 24 notebook itself was restricted, and, prior to this litigation, only four people had seen the contents
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8 d. BioCardia Lifesciences is the owner of this trade secret because the two
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12 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he described and
 13 explained a March 2000 lab notebook entry to her during an hour-long meeting. The following
 14 excerpts are examples of disclosures from the notebook that describe this trade secret:



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 20 A fluid biopsy probe, such as a hollow helical needle
 21 may be rotated into the ovary to obtain a
 22 sample of the cyst. Such a probe could also be
 23 used to drain the cyst. Such a probe could also
 24 be used to deliver RF energy to kill tissue
 25 in the cyst, or to deliver alcohol or cytotoxic
 agents designed to introduce necrosis locally.
 26
 27 The steerable guide gains access through the
 28 vagina to the fallopian tube and may be facilitated
 by fiber optic imaging.

 29
 30 The steerable guide once positioned may be used
 31 to advance imaging probes such as rotating ultrasound
 32 transducers, biopsy probes, therapeutic probes,
 33 or combinations of these.

1 f. nVision directly misappropriated this trade secret by disclosing and using the trade
2 secret through improper means. For example, claim 1 of U.S. Patent No. 10,639,016 sets out all
3 the components of this trade secret. nVision’s efforts to develop and commercialize the Mako
4 also misappropriated this trade secret, since implementation of the Mako device, such that a fluid
5 reservoir supplies fluid through a hollow element to evert a balloon at the distal end of the
6 catheter to collect cells from the fallopian tube, practices this trade secret. Mako documentation,
7 such as the instructions for use, also disclose this trade secret since the documents describe using
8 a fluid reservoir supplies fluid through a hollow element to evert a balloon at the distal end of the
9 catheter to collect cells from the fallopian tube. BioCardia Lifesciences is informed and believes
10 and on that basis alleges that nVision also misappropriated this trade secret through improper
11 disclosure when, for example, nVision consulted with various physicians about the design,
12 development, or clinical trials for the Mako device. As a result, nVision’s actions to acquire
13 patents on this trade secret, develop and market the Mako device that implements this trade
14 secret, and disclose the trade secret to practitioners as part of the design and development of the
15 Mako product, all constitute misappropriation of this trade secret.

16 h. nVision's misappropriation damaged BioCardia Lifesciences. For example,
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18 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision's
19 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
20 on the method, along with the financial benefits that monopoly would confer.

183. Therapeutic strategy for identifying precancerous and cancerous growths
based on a diagnosis performed from a locally-obtained sample before evidence of
metastasis has appeared by, for example, obtaining a local biological sample derived from
the ovary or adjacent fluids to determine that the ovary has a significant possibility of
having a malignant cancer, and using this information to determine appropriate treatments:

26 a. This therapeutic method is a trade secret because it is a method, technique, or
27 process, that derives actual or potential economic value from not being known, and is subject to
28 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a

1 catheter, which can equally be called a technique or process.

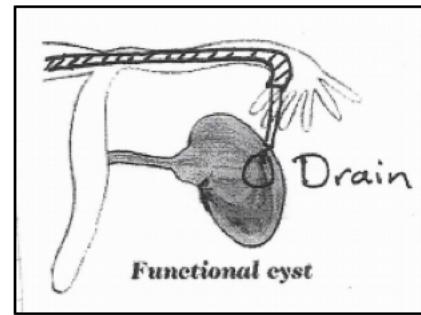
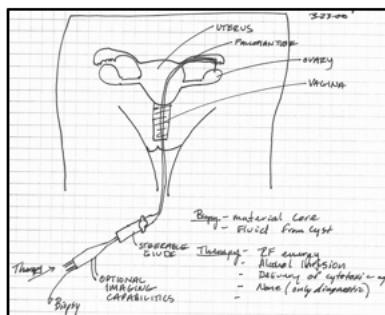
2 b. This trade secret derived both actual and potential value from not being generally
 3 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision,
 4 which BioCardia first reviewed in 2019, the addressable market for a non-invasive method for
 5 early detection of ovarian cancer was \$4 billion and involved roughly 8 million patients per year.
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7 A fluid biopsy probe, such as a hollow helical needle
 8 may be rotated into the ovary to obtain a
 9 sample of the cyst. Such a probe could also be
 10 used to drain the cyst. Such a probe could also
 11 be used to deliver RF energy to kill tissue
 12 in the cyst, or to deliver alcohol or cytotoxic
 13 agents designed to introduce necrosis locally.

14 The steerable guide gains access through the
 15 vagina to the fallopian tube and may be facilitated
 16 by fiber optic imaging.



17 The steerable guide once positioned may be used
 18 to advance imaging probes such as rotating ultrasound
 19 transducers, biopsy probes, therapeutic probes,
 20 or combinations of these.

21 f. nVision directly misappropriated this trade secret by disclosing and using the trade
 22 secret through improper means. For example, claim 1 of U.S. Patent No. 10,639,016 sets out all
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 24 also misappropriated this trade secret, since implementation of the Mako device, such that the
 25 evertting balloon at the distal end of the catheter is used to obtain a local biological sample derived
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 28 instructions for use, also disclose this trade secret since the documents describe using a catheter to
 obtain a local biological sample derived from the ovary or adjacent fluids to determine ovarian
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 device. As a result, Ms. Sarna's actions to acquire patents on this trade secret, develop and

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 7 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
 8 on the method, along with the financial benefits that monopoly would confer.

9 184. **Therapeutic strategy for delivering ablative compounds such as alcohol or**
 10 **ablative energy through a catheter system passed through a vagina, uterus, and fallopian**
 11 **tubes to treat disease or a condition of the ovary in which a penetrating element is advanced**
 12 **into the fallopian tubes, fimbria, or ovary:**

13 a. This therapeutic method is a trade secret because it is a method, technique, or
 14 process, that derives actual or potential economic value from not being known, and is subject to
 15 reasonable efforts to maintain its secrecy. As the trade secret suggests, it is a method of using a
 16 catheter, which can equally be called a technique or process.

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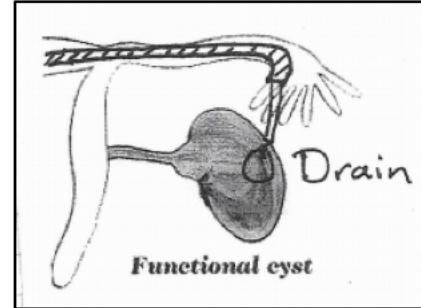
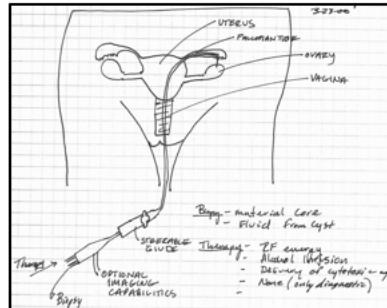
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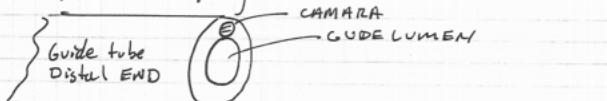
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A fluid biopsy probe, such as a hollow helical needle may be rotated into the ovary to obtain a sample of the cyst. Such a probe could also be used to drain the cyst. Such a probe could also be used to deliver RF energy to kill tissue in the cyst, or to deliver alcohol or cytotoxic agents designed to introduce necrosis locally.

The steerable guide gains access through the vagina to the fallopian tube and may be facilitated by fiber optic imaging.



The steerable guide once positioned may be used to advance imaging probes such as rotating ultrasound transducers, biopsy probes, therapeutic probes, or combinations of these.

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4 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
5 on the method, along with the financial benefits that monopoly would confer.

6 185. and cancerous cysts minimally invasively with details on the ramifications for
7 therapy with early diagnosis, and strategies for doing so that align with new biological
8 measurement technologies in gene expression and genetic analysis that enable a small
9 sample to identify the presence of disease, including details on the players in the gene
10 diagnosis space looking at blood (CareDx), solid tumor tissues (Genomic health), and cells
11 sloughing from within a body lumen conduit such as that of a bowel movement which passes
12 through the colon (EXACT Sciences):

13 a. This market need is a trade secret because it is information that derives actual or
14 potential economic value from not being known and is subject to reasonable efforts to maintain its
15 secrecy.

16 b. This trade secret derived both actual and potential value from not being generally
17 known to the public. For example, as Ms. Sarna set out in her 2013 presentation on nVision, the
18 addressable market for a non-invasive method for early detection of ovarian cancer was \$4 billion
19 and involved roughly 8 million patients per year. Dkt 1 at Ex. B at slide 29. In addition, Boston
20 Scientific paid \$275 million to purchase nVision based in part on its commercial development of
21 this trade secret.

22 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
23 The only people who were aware of this trade secret were Drs. Altman and Stertzner, and neither
24 recorded this trade secret in the lab notebook or any other document. As a result, the secret could
25 not be made public unless Dr. Altman or Dr. Stertzner made the conscious decision to disclose it.
26 Both Drs. Altman and Stertzner were contractually bound to keep this BioCardia trade secret
27 confidential by non-disclosure agreements.

28 d. BioCardia Lifesciences is the owner of this trade secret because the two

1 individuals who conceived of and developed the trade secret, Drs. Peter Altman and Simon
2 Stertzner, both assigned all right, title, and interest in the intellectual property to BioCardia, or its
3 predecessor Hippocratic Engineering.

4 e. Dr. Peter Altman disclosed this trade secret to Ms. Sarna when he described and
5 explained a March 2000 lab notebook entry to her during an hour-long meeting. Although this
6 particular trade secret was not recorded in the lab notebook, Dr. Altman had extensive knowledge
7 of the subject based on his involvement in CareDx, one of the leading gene expression profiling
8 companies in the world. Dr. Altman shared this knowledge with Ms. Sarna during their meeting
9 in or around May 2009, in the hopes that it would motivate her to further develop the concepts
10 disclosed in the March 2000 lab notebook entry.

11 f. nVision directly misappropriated this trade secret by disclosing and using the trade
12 secrets. For example, claim 1 of PCT/US Patent Application No. 2018/000,229 sets out all the
13 components of this trade secret, by, for example covering “a device for Fallopian tube
14 diagnostics” using tissue samples from the fallopian tubes. nVision’s efforts to develop and
15 commercialize the Mako also misappropriated this trade secret, since implementation of the Mako
16 device required use of gene expression technology in order to determine ovarian state, thereby
17 practicing this trade secret. Mako documentation, such as the instructions for use, also disclose
18 this trade secret. BioCardia Lifesciences is informed and believes and on that basis alleges that
19 nVision also misappropriated this trade secret through improper disclosure when, for example,
20 nVision consulted with various physicians about the design, development, or clinical trials for the
21 Mako device. As a result, nVision’s actions to acquire patents on this trade secret, develop and
22 market the Mako device that implements this trade secret, and disclose the trade secret to
23 practitioners as part of the design and development of the Mako product, all constitute
24 misappropriation of this trade secret.

25 h. nVision’s misappropriation damaged BioCardia Lifesciences. For example,
26 because of nVision’s misappropriation, the BioCardia Entities missed out on the \$275 million
27 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision’s
28 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly

1 on the method, along with the financial benefits that monopoly would confer.

2 **Trade Secrets Disclosed by BioCardia Testing Equipment**

3 186. **A catheter system which includes a distal spring element on its end and**
 4 **having a round spherical ball mounted on the spring to avoid damage to the lumen through**
 5 **which it is passed, by, for example, having of a catheter shaft with a hollow lumen,**
 6 **containing a fluid conduit, which passes through a helical metal spring on its distal end**
 7 **attached to a small ball attached to the distal most end:**

8 a. This ball-and-spring structure is a trade secret because it is a device that derives
 9 actual or potential economic value from not being known and is subject to reasonable efforts to
 10 maintain its secrecy.

11 b. This trade secret derived both actual and potential value from not being generally
 12 known to the public. It presents a novel way of preventing the tip of a catheter from damaging
 13 tissue as it is advanced in a body. This presents a competitive advantage to BioCardia in that it
 14 has a useful safety feature that other catheter companies do not have.

15 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
 16 The spring-and-ball structure was part of testing equipment that BioCardia developed and built
 17 internally and was never shown to anyone outside the company. Even within the company, only
 18 a small subset of employees actually saw this testing equipment. Everyone who came into
 19 contact with the testing equipment was under a non-disclosure agreement.

20 d. BioCardia Lifesciences the owner of this trade secret because the testing
 21 equipment was developed on behalf of BioCardia and the people who made the equipment
 22 assigned all rights, title, and interest to the equipment to BioCardia.

23 e. The testing equipment was disclosed to Ms. Sarna as part of her work at
 24 BioCardia. Ms. Sarna used this particular piece of equipment to ensure that catheters had the
 25 proper internal diameter to function properly.

26 f. NVision misappropriated this trade secret by disclosing it in patent applications.

27 g. nVision's misappropriation damaged BioCardia Lifesciences. For example,
 28 because of nVision's misappropriation, the BioCardia Entities missed out on the \$275 million

1 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision's
 2 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
 3 on the method, along with the financial benefits that monopoly would confer.

4

5 **Trade Secrets Disclosed by BioCardia Template Documents**

6 187. **BioCardia template documents sent to Ms. Sarna's personal email account,**
 7 **consisting of the following templates: Risk Analysis, Product Specification, Labelling**
 8 **Verification, and Document Change Order procedures:**

9 a. These template documents are trade secrets because they are information about
 10 how to effectively handle medical device tasks, that derive actual or potential economic value
 11 from not being known and are subject to reasonable efforts to maintain its secrecy.

12 b. This trade secret derived both actual and potential value from not being generally
 13 known to the public. The knowledge and experience inherent in the documents, and the time and
 14 resources saved from using the documents, confer a competitive advantage that makes medical
 15 device development more profitable. Because BioCardia's competitors do not have this
 16 information, BioCardia has an advantage in the form of better products made at lower cost.

17 c. BioCardia undertook reasonable efforts to preserve the secrecy of this trade secret.
 18 BioCardia internal documents containing confidential information were labelled "confidential"
 19 and all documents containing BioCardia confidential information that were released externally
 20 were marked "confidential."

21 d. BioCardia is the owner of this trade secret because the individuals who created
 22 these documents assigned all right, title, and interest in the intellectual property to BioCardia.

23 e. These trade secrets were disclosed to Ms. Sarna when they were shared with her as
 24 part of her work for BioCardia.

25 f. BioCardia Lifesciences is informed and believes and on that basis alleges that
 26 nVision incorporated the structure, format, and even language of the documents into nVision's
 27 corresponding documents.

28 g. nVision's misappropriation damaged BioCardia because it meant that nVision had

1 this valuable information to assist it in making competing catheter products. In addition, these
 2 template documents helped nVision's transition from a start-up to an established organization,
 3 which meant they increased the competence of BioCardia's competition, and did so at a faster
 4 rate than normally would happen.

5 h. nVision's misappropriation damaged BioCardia Lifesciences. For example,
 6 because of nVision's misappropriation, the BioCardia Entities missed out on the \$275 million
 7 valuation Boston Scientific placed on the intellectual property. Furthermore, nVision's
 8 commercialization of this trade secret prevented the BioCardia Entities from having a monopoly
 9 on the method, along with the financial benefits that monopoly would confer.

10 188. The BioCardia trade secrets were subject to efforts that are reasonable under the
 11 circumstances to maintain their secrecy, including but not limited to, requiring all employees to
 12 execute the BioCardia standard Employment Agreement in the same form as the Sarna
 13 Agreement attached hereto as Exhibit A, restricting access to BioCardia's information to
 14 employees who have executed the BioCardia standard Employment Agreement, locking
 15 BioCardia's facilities and restricting access to BioCardia's facilities to employees who had signed
 16 the standard Employment Agreement and to visitors who are escorted by someone who had
 17 signed the standard Employment Agreement.

18 189. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 19 Shareholder Defendants and Boston Scientific are sophisticated companies and investors focused
 20 on investments in or acquisitions of early-stage companies (each an "Investment Target") and,
 21 thus, are familiar with intellectual property issues that Investment Targets have. These include,
 22 among other things, that a former employer of a founder of an Investment Target might have a
 23 claim to ownership of the inventions claimed by the Investment Target, or that the inventions
 24 claimed by the Investment Target may be based on trade secrets misappropriated from a former
 25 employer because, among other things.

26 a. They had been contractually assigned by the founder to the founder's former
 27 employer;

- b. They were co-invented with an employee or employees of the founder's former employer; or
- c. They were based on information learned at and/or belonging to the former employer.

190. BioCardia Lifesciences is informed and believes and on that basis alleges that because of, among other things, the intellectual property issues that an Investment Target might have with a founder's former employer, the Shareholder Defendants and Boston Scientific customarily perform "due diligence" on an Investment Target focusing particularly on ferreting out any issues that might exist with the Investment Target's ownership or right to use its purported technology and intellectual property.

191. BioCardia Lifesciences is informed and believes and on that basis alleges that the Shareholder Defendants and Boston Scientific focused on investments in and acquiring early-stage medical device companies and, therefore, knew, or at least should have known, that BioCardia, the company nVision's founder, Ms. Surbhi Sarna, worked for immediately prior to nVision, was also a medical device company working on the same type of medical device that nVision planned to work on: diagnostic catheters.

192. BioCardia Lifesciences is informed and believes and on that basis alleges that, as specialists in investments in or acquisitions of early stage medical device companies, the Shareholder Defendants and Boston Scientific knew or at least should have known there was a heightened risk – well beyond the risks inherent in any early stage company - that nVision’s technology and intellectual property actually belonged to BioCardia.

193. BioCardia Lifesciences is informed and believes and on that basis alleges that, in addition to the heightened risk inherent in the fact that nVision was focused on the same type of medical device development as was BioCardia (diagnostic catheters), the Shareholder Defendants and Boston Scientific knew that there was a likelihood that nVision's claimed technology and intellectual property actually belonged to or had been misappropriated from BioCardia, because they knew or at least should have known through their due diligence of nVision that:

a. Ms. Sarna's undergraduate major was molecular and cellular biology. She does not have any graduate degrees. Her work at BioCardia dealt with tracking device

1 failures, ensuring label compliance, and obtaining materials from vendors. While at
2 BioCardia, Ms. Sarna's work responsibilities did not include designing or developing
3 medical devices. BioCardia Lifesciences is informed and believes and on that basis
4 alleges that Ms. Sarna's only other experience in the medical device space involved
5 similar tasks as the ones she performed at BioCardia. Ms. Sarna's age, education, and
6 work experience were highly unusual for someone who allegedly came up with a medical
7 device and technique so revolutionary that a company like Boston Scientific would value
8 it at hundreds of millions of dollars.

9 b. Ms. Sarna started consulting with BioCardia on September 15, 2008 and
10 became a full-time employee of BioCardia on November 3, 2008, at which time she
11 signed the Sarna Agreement, and where she worked until resigning in January 2012;

12 c. Ms. Sarna registered nVision as a Delaware corporation on September 28,
13 2009, the year after she joined BioCardia and more than two years before she left
14 BioCardia and apparently ran it in “stealth mode” to conceal its existence from BioCardia;

15 d. Ms. Sarna entered into a “Technology Transfer Agreement” “effective as
16 of December 26, 2009 between Surbhi Sarna (the ‘Founder’), and nVision Medical
17 Corporation, a Delaware corporation” more than two years before she left BioCardia.

18 e. In the Technology Transfer Agreement, Ms. Sarna assigned to nVision
19 “All rights, title and interests in and to all intellectual property arising out of or related to
20 the ‘nVision Medical; business plan, including, without limitation, all ideas, designs,
21 techniques, processes, formulas, trade secrets, inventions, discoveries, improvements,
22 research or development and test results, specifications, data, know-how, business
23 methods, marketing plans, other business plans, strategies, forecasts, unpublished
24 financial information, budgets, projections, business prospects, copyrights and trademarks
25 (inclusive of all goodwill relate thereto), and the following trademark, copyright, and
26 patent applications and registrations.” The patent application identified in the Technology
27 Transfer Agreement is a “USPTO provisional patent application filed on or around
28 September 29, 2009.”

1 f. Ms. Sarna only registered nVision to do business in California on February
2 21, 2012, about a month after she left BioCardia, when, BioCardia Lifesciences is
3 informed and believes and on that basis alleges, she believed it was no longer possible to
4 conceal nVision's existence from BioCardia.

5 g. BioCardia Lifesciences is informed and believes and on that basis alleges
6 that the *incorporation* of nVision more than two years *before* Ms. Sarna left BioCardia,
7 and the *registration* of nVision to do business in California only *after* she had left
8 BioCardia, alone should have set off alarm bells in any competent due diligence
9 conducted by or for anyone seeking to invest in nVision;

10 h. Ms. Sarna, in common with most Silicon Valley employees, was
11 contractually obligated to assign to BioCardia inventions she made while working at
12 BioCardia (see Exhibit A attached hereto-the Sarna Agreement), subject only to her
13 proving that they were excluded by Labor Code § 2870, which BioCardia Lifesciences is
14 informed and believes and on that basis alleges that anyone seeking to invest in nVision
15 would understand was unlikely given that both nVision and BioCardia were in the same
16 general area of medical devices (diagnostic catheters);

17 i. On January 25, 2011, while a BioCardia employee and a year before Ms.
18 Sarna left BioCardia, Ms. Sarna filed U.S. Provisional application No. 61/435,945 ("the
19 '945 provisional patent application");

20 j. On December 3, 2010, while still a BioCardia employee and a year before
21 Ms. Sarna left BioCardia, Ms. Sarna emailed Anula Jayasuriya, then affiliated with
22 Defendant Astia Angels nVision LLC and later affiliated with Defendant EXXclaim
23 Capital Partners I, L.P., and Linda Greub, then a partner at Defendant LMNVC, LLC,
24 from her BioCardia account requesting help conceptualizing the invention of the '945
25 provisional patent application;

26 k. Ms. Sarna subsequently filed three other published applications claiming
27 priority to the '945 provisional patent application;

1. On November 13, 2011, also while still a BioCardia employee, Ms. Sarna
 2 filed a provisional application entitled “Device and method to confirm occlusion of
 3 the fallopian tube”; and

4 m. Ms. Sarna subsequently filed Application No, 14/357,875, which claimed
 5 priority to the ’120 provisional patent application.

6 194. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 7 Shareholder Defendants and Boston Scientific knew, or at least should have known, that the filing
 8 of all of these patent applications while Ms. Sarna was employed by BioCardia, but which were
 9 assigned to nVision, meant that the patent applications likely had been contractually assigned to
 10 BioCardia.

11 195. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 12 Shareholder Defendants and Boston Scientific also knew, or at least should have known, that the
 13 filing of all of these patent applications while Ms. Sarna was employed by BioCardia, but which
 14 were assigned to nVision, meant that there likely were unnamed BioCardia co-inventors on some
 15 or all of the patent applications.

16 196. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 17 Shareholder Defendants and Boston Scientific also knew, or at least should have known, that the
 18 filing of all of these patent applications while Ms. Sarna was employed by BioCardia, but which
 19 were assigned to nVision, together with the other acts alleged above while Ms. Sarna was a
 20 BioCardia employee, meant that nVision’s purported technology and intellectual property likely
 21 was based on misappropriated BioCardia trade secrets.

22 197. The risks undertaken by an investor who knows or should know that the
 23 technology and intellectual property claimed by an Investment Target likely belongs to a former
 24 employer as is with the case with the patents Ms. Sarna was contractually obligated to assign to
 25 BioCardia, or is likely based on trade secrets misappropriated from a former employer, is unlike
 26 any common investment and market risk. While common investment risks, if realized, might
 27 operate to reduce the value of the Investment Target and, therefore, the value of the investor’s
 28 investment, an investor who knows or should know that the technology and intellectual property

1 claimed by an Investment Target is likely based on patents rightfully owned by another or trade
 2 secrets misappropriated from another is exposed to the equitable rights of the rightful owner of
 3 the technology and intellectual property, including, as alleged below, the risk of disgorgement of
 4 all benefits of the investment.

5 198. Here, the Shareholder Defendants' investment in nVision and Boston Scientific's
 6 acquisition of the stock of nVision was made with the actual or imputed knowledge that the
 7 technology and intellectual property claimed by Ms. Sarna and nVision was likely based on
 8 patents belonging to and trade secrets misappropriated from BioCardia; accordingly, they did not
 9 undertake a common investment risk but, rather, undertook the risk of disgorgement of all
 10 benefits from their investment.

11 199. The Shareholder Defendants' and Boston Scientific's liability to BioCardia is
 12 direct, not vicarious, and does not require piercing nVision's corporate veil.

13 200. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 14 Shareholder Defendants made a conscious decision to participate in and further the wrongful acts
 15 of nVision and Ms. Sarna by investing in nVision and providing it with the funding necessary to
 16 commit the acts as herein alleged.

17 201. Alternatively, BioCardia Lifesciences is informed and believes and on that basis
 18 alleges that the Shareholder Defendants and Boston Scientific were conscious wrongdoers
 19 because they acted with the knowledge or despite the known risk that nVision and Ms. Sarna had
 20 acted in violation of BioCardia's rights. Their investments in nVision were made "despite a
 21 known risk that the conduct in question violate[d] the rights of [BioCardia]." Under California
 22 law and Sections 51(3)(b) and 3 comment e, of the Restatement (Third) of Restitution and Unjust
 23 Enrichment, their decision to invest in nVision despite that known risk of liability – i.e., despite
 24 that "known unknown" – renders them "conscious wrongdoers" and places upon them the risk of
 25 liability by a disgorgement measure.

26 202. BioCardia Lifesciences is informed and believes and on that basis alleges that the
 27 Shareholder Defendants provided funding to nVision that was a substantial factor in enabling
 28 nVision and Ms. Sarna to commit the acts as herein alleged, and that the Shareholder Defendants

1 knowingly benefited from the acts as herein alleged.

2 203. The Shareholder Defendants and Boston Scientific are required to disgorge to
3 BioCardia the amount of their unjust enrichment as a result of the acts alleged, including at least
4 the amount Boston Scientific paid the Shareholder Defendants for their shares of stock in
5 nVision.

6 204. BioCardia Lifesciences is informed and believes and on that basis alleges that
7 Fortis, as Stockholders' Representative, is holding in trust approximately ten percent (10%) of the
8 amount paid by Boston Scientific for the nVision stock of the Shareholder Defendants, among
9 other shareholders, resulting from their provision of funding to nVision that was a substantial
10 factor in enabling nVision and Ms. Sarna to commit the acts as herein alleged, and therefore
11 Fortis is required to disgorge to BioCardia the amount it holds in trust for the Shareholder
12 Defendants. The Shareholder Defendants are required to direct Fortis to disgorge to BioCardia
13 any amounts received from Boston Scientific that Fortis is holding for the benefit of the
14 Shareholder Defendants as a result of the Shareholders Defendants' unjust enrichment as a result
15 of the acts alleged, including at least the amount Boston Scientific paid the Shareholder
16 Defendants for their shares of stock in nVision.

17 205. As a further direct and proximate result of Ms. Sarna's breaches of the Sarna
18 Agreement, Defendants other than Boston Scientific have been unjustly enriched for example, in
19 an amount equal to at least what Boston Scientific paid for nVision. Defendants have been enriched
20 by Ms. Sarna's breaches of contract, reaping benefits they would not otherwise have achieved in
21 the absence of the breaches. Defendants received benefits in the form of intellectual property and
22 money based on Ms. Sarna's breaches of contract as alleged above. Defendants' retention of the
23 benefits they received from Ms. Sarna's breaches of contract is unjust as Ms. Sarna was not
24 contractually permitted to share these benefits with anyone else. As such, BioCardia is entitled to
25 disgorgement of all of Defendants' profits and consequential gains reaped from their unjust
26 enrichment. As a proximate result of the acts herein alleged, BioCardia Lifesciences is entitled to
27 damages in an amount to be proven for nVision's misappropriation of BioCardia's trade secret
28 claim;

206. As a proximate result of the acts herein alleged, BioCardia Lifesciences is entitled to exemplary damages in an amount of twice BioCardia Lifesciences' actual damages for Defendants' willful and malicious misappropriation of the BioCardia Trade Secrets.

207. As a proximate result of the acts herein alleged, BioCardia Lifesciences is entitled to attorneys' fees for Defendants' willful and malicious misappropriation of the BioCardia Trade Secrets.

COUNT IV

**(Misappropriation of Trade Secrets under the Defend Trade Secrets Act, 18 U.S.C. § 1836)
(Against Ms. Sarna, nVision and Boston Scientific and Disgorgement Against All
Defendants)**

208. BioCardia realleges paragraphs 1-207, inclusive.

209. The Defend Trade Secrets Act, 18 U.S.C. § 1836, applies because at least some of the acts of misappropriation, including at least the disclosure or use of the BioCardia Trade Secrets, occurred after the May 11, 2016 effective date of the Act.

210. The Shareholder Defendants and Boston Scientific are required to disgorge to BioCardia the amount of their unjust enrichment as a result of the acts alleged, including at least the amount Boston Scientific paid the Shareholder Defendants for their shares of stock in nVision.

211. BioCardia Lifesciences is informed and believes and on that basis alleges that Fortis, as Stockholders' Representative, is holding in trust approximately ten percent (10%) of the amount paid by Boston Scientific for the nVision stock of the Shareholder Defendants, among other shareholders, resulting from their provision of funding to nVision that was a substantial factor in enabling nVision and Ms. Sarna to commit the acts as herein alleged, and therefore Fortis is required to disgorge to BioCardia the amount it holds in trust for the Shareholder Defendants. The Shareholder Defendants are required to direct Fortis to disgorge to BioCardia any amounts received from Boston Scientific that Fortis is holding for the benefit of the Shareholder Defendants as a result of the Shareholders Defendants' unjust enrichment as a result of the acts alleged, including at least the amount Boston Scientific paid the Shareholder

1 Defendants for their shares of stock in nVision.

2 212. As a further direct and proximate result of Ms. Sarna's breaches of the Sarna
 3 Agreement, Defendants other than Boston Scientific have been unjustly enriched for example, in
 4 an amount equal to at least what Boston Scientific paid for nVision. Defendants have been enriched
 5 by Ms. Sarna's breaches of contract, reaping benefits they would not otherwise have achieved in
 6 the absence of the breaches. Defendants received benefits in the form of intellectual property and
 7 money based on Ms. Sarna's breaches of contract as alleged above. Defendants' retention of the
 8 benefits they received from Ms. Sarna's breaches of contract is unjust as Ms. Sarna was not
 9 contractually permitted to share these benefits with anyone else. As such, BioCardia is entitled to
 10 disgorgement of all of Defendants' profits and consequential gains reaped from their unjust
 11 enrichment. As a proximate result of the acts herein alleged, BioCardia Lifesciences is entitled to
 12 damages in an amount to be proven for nVision's misappropriation of BioCardia's trade secret
 13 claim;

14 213. As a proximate result of the acts herein alleged, BioCardia Lifesciences is entitled
 15 to exemplary damages in an amount of twice BioCardia Lifesciences' actual damages for
 16 Defendants' willful and malicious misappropriation of the BioCardia Trade Secrets.

17 214. As a proximate result of the acts herein alleged, BioCardia Lifesciences is entitled
 18 to attorneys' fees for Defendants' willful and malicious misappropriation of the BioCardia Trade
 19 Secrets.

20

21 **PRAYER FOR RELIEF**

22 1. An order correcting the inventorship of the '945 Provisional Application Family,
 23 the '120 Provisional Application Family, the '472 Application Family and the Additional
 24 Provisional Applications to name Dr. Peter Altman and Dr. Simon Stertzner as co-inventors.

25 2. Damages in an amount to be proven on BioCardia's misappropriation of trade secret
 26 claim;

27 3. Exemplary damages against in an amount of twice BioCardia's actual damages for
 28 nVision's willful and malicious misappropriation of the BioCardia Trade Secrets;

4. Attorneys' fees for its willful and malicious misappropriation of BioCardia's trade secrets;

5. An order imposing a constructive trust for the benefit of BioCardia, on nVision and Boston Scimed and compelling the assignment to BioCardia, of each of the patents and patent applications in the '945 Provisional Application Family, the '120 Provisional Application Family, the '472 Application Family and the Additional Provisional Applications;

6. An order requiring the disgorgement to BioCardia by all Defendants other than Fortis of their unjust enrichment and all consequential gains reaped from their unjust enrichment;

7. An order requiring the disgorgement to BioCardia by the Shareholder Defendants of the consideration Boston Scientific paid for their nVision stock and all consequential gains reaped from their unjust enrichment;

8. An order requiring the Shareholder Defendants to direct to disgorge to BioCardia any consideration Boston Scientific paid for the Shareholder Defendants' nVision stock and held by Fortis , and all consequential gains resulting therefrom;

9. Pre-judgment and post-judgment interest; and

10. Such further and other relief as the Court may deem proper and just.

Dated: October 26, 2020

By /s/ Ian N. Feinberg
Ian N. Feinberg

Attorneys for Plaintiff BioCardia Lifesciences, Inc.

DEMAND FOR JURY TRIAL

BioCardia demands trial by jury on all claims and issues so triable.

Dated: October 26, 2020

By /s/ Ian N. Feinberg
Ian N. Feinberg

Attorneys for Plaintiff BioCardia Lifesciences, Inc.